TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~385~~ 147.

ED. H. REID, APPELLANT,

vs.

ROBERT J. JONES, SHERIFF OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED JULY 29, 1901.

(18,240.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 18, 1901.

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1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered, that heretofore and on, to wit, the 26th day of June, A. D. 1901, came Ed. H. Reid by Messrs. Talbot, Denison, and Wadley, his attorneys, and filed in said court a petition for a writ of *habeas corpus*.

And the said petition is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } ss.:
District of Colorado, }

In the Circuit Court of the United States within and for the District of Colorado.

In the Matter of ED. H. REID. Petition for *Habeas Corpus*.

To the honorable the circuit court of the United States for the district of Colorado:

The petition of Ed. H. Reid respectfully shows that he is imprisoned, detained, confined, and restrained of his personal liberty by Robert J. Jones, sheriff of Arapahoe county, Colorado, in the
2 county jail of said county, by virtue of a mittimus, a copy of which is hereto attached, marked (Exhibit A) and made a part hereof.

Your petitioner further says that he is advised and believes that his said imprisonment is illegal and in violation of the Constitution of the United States, and of the laws of the United States, in this, to wit: That on or about the 20th day of June, A. D. 1901, he loaded upon the cars at the town of Hereford, county of Deaf Smith, in the State of Texas, a large number, to wit, eight hundred and eighty-two head of cattle, coming from the counties of Lubbock and Cochran, in the State of Texas for importation into the State of Wyoming, through the State of Colorado. That said cattle had previously been then and there inspected, according to the statute of the United States in such case made and provided, and according to the rules and regulations pursuant to said statute, promulgated by the Department of Agriculture by a duly authorized inspector of the Bureau of Animal Industry of the United States at said Hereford, in the State of Texas, and had been duly certified by him to be free from any infectious or contagious disease, and said cattle were free from any infectious or contagious disease. That the said counties of Deaf Smith, Lubbock, and Cochran, in the State of Texas, are south of the thirty-sixth (36) parallel of north latitude. That said cattle had not been held north of said parallel of latitude for ninety (90) days prior to their importation into the State of
3 Colorado. That without the consent and against the will of your petitioner, said cattle were inspected by the inspectors of the said State of Colorado, and that your petitioner refused to pay for such latter inspection the fees or expenses provided by the stat-

ute of the State of Colorado, and because of such refusal the State veterinary sanitary board refused to deliver to your petitioner, any certificate or bill of health to the effect that said cattle were free from all infections or contagious diseases, or that they had not been exposed at any time within ninety (90) days prior thereto, to any of said diseases. That on or about the 20th day of June, 1901, said cattle were by your petitioner, brought into the State of Colorado, and into the county of Arapahoe, on their way to Wyoming without procuring such certificate or bill of health.

That afterwards, to wit, on the 26th day of June, 1901, your petitioner was accused in the district court of Arapahoe county, Colorado, by the information of one H. A. Lindsley, district attorney of said Arapahoe county, pursuant to which accusation, he was tried and convicted under the statutes of Colorado aforesaid, the same being sections two and three of an act entitled "An act to prevent the introduction of any infectious or contagious disease among the cattle and horses of this State passed and approved, March
4 21, 1885;" which said statute is contrary to the Constitution and laws of the United States; and the mittimus aforesaid was issued a copy of which information is hereto attached and made a part hereof, and marked Exhibit B.

Wherefore, your petitioner prays that a writ of *habeas corpus* may be granted and issued, directed to the said Robert J. Jones, sheriff aforesaid, commanding him to bring and have the body of the said Ed. H. Reid before your honors at the time and place therein to be specified, to do and receive what shall be then and there considered by your honors concerning the said Ed. H. Reid; together with the time and cause of his detention and said writ, and that the said Ed. H. Reid may be restored to his liberty.

Dated the 26 day of June, 1901.

ED. H. REID.

STATE OF COLORADO, } *ss:*
County of Arapahoe, }

Ed. H. Reid being first duly sworn on his oath says: that he is the petitioner named in the above-named petition; that he has read the foregoing petition and knows the contents thereof, and that the same is true.

ED. H. REID.

Subscribed and sworn to before me this 26th day of June, 1901. My commission expires Jan. 20, 1903.

EDITH L. HARRIS,
Notary Public.

[SEAL.]

5 EXHIBIT A.

STATE OF COLORADO, } ss:
County of Arapahoe, }

The People of the State of Colorado to the sheriff of Arapahoe county:

Whereas, at the April term, last past, of our district court of Arapahoe county, upon a certain information in our said court, against one Ed. H. Reid, for the crime of bringing, driving, and causing to be brought and driven into the State of Colorado, cattle without complying with, and in violation of an act of the General Assembly of the State of Colorado, entitled, An act to prevent the introduction of any infectious or contagious disease among the cattle and horses of this State, approved March 21st, 1885, depending, judgment was in our said district court on the 26th day of June last past, given against the said Ed. H. Reid. That the said defendant Ed. H. Reid be confined in the common jail of Arapahoe county, at hard labor, for the full period of six months from this day.

We therefore command you, the sheriff of the said county of Arapahoe, that you take the body of the said Ed. H. Reid, and him safely convey to the common jail of Arapahoe county, and there him safely keep and detain, according to the judgment of our said district court as aforesaid.

Witness, Otis B. Spencer, clerk of our said court, and the seal thereof, at Denver, in said county, this 26th day of June, A. D. 1901.

OTIS B. SPENCER, *Clerk.*
[SEAL.] H. W. PROUTY,
Deputy Clerk.

(Endorsed:) 14967—Mittimus—District court, Arapahoe county, April term, A. D. 1901, Ed. H. Reid,—Sentence —. Expires —— —.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Otis B. Spencer, clerk of the district court of Arapahoe
6 county, State aforesaid, do hereby certify the above and foregoing to be a true, complete, and perfect transcript and copy of mittimus had and entered of record in a certain cause in said court lately depending wherein The People of the State of Colorado, — plaintiff, and Ed. H. Reid, defendant, as the same now remains on file and of record in this office.

Witness my hand and seal of said court, at the court-house in Denver, county and State aforesaid, this 26th day of June, A. D. 1901.

OTIS B. SPENCER, *Clerk.*
[SEAL.] H. W. PROUTY,
Deputy Clerk.

EXHIBIT B.

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the District Court, April Term, A. D. 1901.

THE PEOPLE OF THE STATE OF COLORADO }
against }
ED. H. REID. }

Henry A. Lindsley, district attorney within and for the second judicial district of the State of Colorado, in the county of Arapahoe, in the State aforesaid in the name and by the authority of the People of the State of Colorado, informs the court that Ed. H. Reid, on, to wit, the twentieth day of June in the year of our Lord nineteen hundred and one, at the county of Arapahoe aforesaid, unlawfully did bring and drive and cause to be brought and driven into the State of Colorado, and into the county of Arapahoe thereof, between the first day of April and the first day of November in said year, eight hundred and eighty-two head of cattle, from cer-
7 tain counties south of the 36° parallel of north latitude, to wit, the counties of Lubbock and Cochran, in the State of Texas, without said cattle having been held at some place north of said parallel of latitude, for a period of at least ninety days prior to their importation into said State of Colorado, and without said Ed. H. Reid, the person owning and having charge of said cattle, having at any time procured from the State veterinary sanitary board of the State of Colorado, a certificate or bill of health to the effect that said cattle were free from all infectious or contagious diseases, and had not been exposed at any time within ninety days prior thereto to any of said diseases, but, on the contrary, having refused and declined to procure or permit any one for him to procure such certificate or bill of health, and having refused and declined to pay or allow or permit any one for him to pay the expense of any inspection so as by the act hereinafter referred to should be paid, all of said acts of said Ed. H. Reid being done without a compliance with and in violation of, the provisions of section two of an act of the General Assembly of the State of Colorado, entitled "An act to prevent the introduction of any infectious or contagious disease among the cattle and horses of this State" approved March 21, 1885, and found at page three hundred and thirty-six of the Session Laws of 1885, of said State of Colorado; contrary to the form of the statute in such case made and provided and against the peace and dignity of the people of the State of Colorado.

HENRY A. LINDSLEY,
District Attorney.
By J. E. McINTYRE, *Deputy.*

(Endorsed:) 1176—United States of America, district of Colorado—In the circuit court of the United States within and for the

district of Colorado—In the matter of Ed. H. Reid—Petition for *habeas corpus*—Filed Jun- 26, 1901—Robert Bailey, clerk—Talbot, Denison, and Wadley, attorneys for petitioner.

8 Thirty-sixth day, May term, Thursday, June 27th, A. D. 1901.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Riner, district judge of the district of Wyoming, assigned to the district of Colorado, and other officers as noted on the seventh day of May last past.

And before the Honorable Moses Hallett, district judge, the following proceedings were had:

In the Matter of the Petition of ED. H. REID for a Writ of *Habeas Corpus*. 4176.

On reading and filing the petition of E. H. Reid, duly signed and verified by him, whereby it appears that he is imprisoned and restrained of his liberty by Robert J. Jones, sheriff of the county of Arapahoe, in the State of Colorado, at the county jail of the said county, and stating wherein the illegality consists, containing a copy of the original warrant of arrest issued by the district court of Arapahoe county, Colorado, and having heard John H. Denison, Esquire, counsel for the petitioner, and Charles C. Post, Esquire, attorney general counsel for the State of Colorado, against the granting of the writ of *habeas corpus*, it appears to the court that a writ of *habeas corpus* ought to issue:

Wherefore it is ordered that a writ of *habeas corpus* issue out of and under the seal of the said circuit court, directed to the
9 said Robert J. Jones, sheriff as aforesaid, commanding him to have the body of the said Ed. H. Reid, before me in the court-room of the said court on Saturday the 29th day of June, A. D. 1901, at the hour of 10 o'clock a. m. to do and receive what shall then and there be considered concerning the said Ed. H. Reid, together with the time and cause of his detention, and that he have then and there the said writ.

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

In the Circuit Court of the United States within and for the District of Colorado, Sitting at Denver.

In the Matter of ED. H. REID.

The President of the United States of America to Robert J. Jones, sheriff of the county of Arapahoe and State of Colorado, Greeting:

You are hereby commanded to be and appear before the circuit court of the United States, within and for the State of Colorado, at the court-room thereof in the city of Denver, on Saturday, the twenty-ninth (29) day of June, A. D. 1901, at ten o'clock in the forenoon, and that you have with you the body of Ed. H.
10 Reid, now in your custody, and that you certify and make known the day and cause of the caption and detention of the

said Ed. H. Reid, and that you then and there do, submit to, and receive whatsoever the said court shall determine upon concerning you in this behalf, according to law, and have you then and there this writ. To the marshal of the United States for the district of Colorado, to make due and legal service and return.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of said circuit court, at the city of Denver, this 27th day of June, A. D. 1901, and of the Independence of the United States, the one hundred and twenty-fifth year.

[SEAL.] ROBERT BAILEY, *Clerk.*

(*Marshal's Return.*)

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I hereby certify that I received the within writ on the 27th day of June, A. D. 1901, and that I have duly executed the same on Robert J. Jones, sheriff of Arapahoe county, by delivering a true copy of this writ to W. O. Shirey, a deputy sheriff of Arapahoe county, personally, on the 27th day of June, 1901, at Denver and county of Arapahoe.

DEWEY C. BAILEY,
U. S. Marshal.

11 (Endorsed:) 1176—U. S. circuit court—*In re* Ed. H. Reid—Writ of *habeas corpus*—Filed Jun- 29, 1901. Robert Bailey, clerk.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States within and for the District of Colorado, Sitting at Denver.

In the Matter of the Application of ED. H. REID for a Writ of *Habeas Corpus.* Return to Writ.

To the circuit court of the United States within and for the State of Colorado and to Honorable Moses Hallett, judge thereof:

Robert J. Jones, the defendant in the within writ, for a return thereto, respectfully submits to said court and to your honor, the judge thereof, that at the time of the service of the within writ he was and still is the duly elected, qualified, and acting sheriff of Arapahoe county, Colorado.

That before and at the time of the coming of this writ he held and detained and still has in custody, said Ed. H. Reid by virtue of a certain warrant of commitment and therein and thereon named and designated as a "mittimus" issued by the district court of the

second judicial district of the State of Colorado, and directed
12 to the sheriff of said Arapahoe county, a true copy of which said warrant of commitment or mittimus as called, is hereunto attached and made a part hereof.

Nevertheless, the body of the said Ed. H. Reid, this defendant now has before your honor, together with the said writ, as therein commanded.

ROBERT J. JONES,
Sheriff of Arapahoe County, Colorado.
By PERRY A. CLAY,
Under Sheriff.

(*Copy of Mittimus.*)

STATE OF COLORADO, } ss:
County of Arapahoe, }

The People of the State of Colorado to the sheriff of Arapahoe county:

Whereas at the April term last past of our district court of Arapahoe county, upon a certain information in our said court, against one Ed. H. Reid, for the crime of bringing, driving, and causing to be brought and driven into the State of Colorado, cattle without complying with and in violation of "An act of the General Assembly of the State of Colorado entitled 'An act to prevent the introduction of any infectious or contagious disease among the cattle and horses of this State'" approved March 21st, 1885, depending, judgment
13 was in our said district court on the 26th day of June last past, given against the said Ed. H. Reid. That the said defendant Ed. H. Reid be confined in the common jail of Arapahoe county at hard labor for the full period of six months from this day.

We therefore command you, the sheriff of the said county of Arapahoe, that you take the body of the said Ed. H. Reid and him safely convey to the common jail of Arapahoe county, and there him safely keep and detain, according to the judgment of our said district court as aforesaid.

Witness, Otis B. Spencer, clerk of our said court, and the seal thereof, at Denver, in said county, this 26th day of June, A. D. 1901.

[SEAL.] OTIS B. SPENCER, *Clerk.*
By H. W. PROUTY, *Deputy Clerk.*

(Endorsed:) Expires Dec. 26, 1901, 14967—Mittimus—District court, Arapahoe county—April term, A. D. 1901—Ed. H. Reid.

(Endorsed:) No. 4176—In U. S. circuit court—*In re* application of Ed. H. Reid for writ of *habeas corpus*—Return to writ of *habeas corpus*—Filed June 29, 1901, Robert Bailey, clerk by Charles W. Bishop, deputy clerk.

14 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States within and for the District of Colorado.

In the Matter of the Application of ED. H. REID for the Writ of *Habeas Corpus.*

Comes now, Ed. H. Reid, the petitioner herein, by Talbot, Denison, and Wadley, his attorneys herein, and demurring to the return herein filed, says, that the same is insufficient in law.

RALPH TALBOT,
JOHN H. DENISON,
WILLIAM H. WADLEY,
Attorneys for Petitioner.

(Endorsed:) No. 4176—In the circuit court of the United States within and for the district of Colorado—In the matter of the application of Ed. H. Reid for the writ of *habeas corpus*—Demurrer to the return of respondent—Filed Jun- 29, 1901. Robert Bailey, clerk—Talbot, Denison, and Wadley, attorneys for petitioner.

15 39th day, Monday, July 1st, A. D. 1901.

Present: The Honorable Moses Hallett, district judge and other officers as noted on the seventh day of May last past.

In the Matter of the Petition of ED. H. REID for a Writ of *Habeas Corpus.* 4176.

The demurrer to the return to the writ of *habeas corpus* heretofore issued herein having heretofore come on to be heard and having been argued by Ralph Talbot, Esquire, attorney for the petitioner and by C. C. Post, Esquire, attorney general of the State of Colorado, for the respondent, and having been taken under advisement and the court having considered the same and being now fully advised in the premises, it seemeth to the court now here that the return to the writ of *habeas corpus* is sufficient in law and so the demurrer is hereby overruled.

Wherefore, it is considered by the court that the said petitioner be remanded to the custody of the sheriff of Arapahoe county, from whence he came, and that the said petition be dismissed at the cost of the petitioner to be taxed.

And thereupon the petitioner by Ralph Talbot, Esquire, his attorney, prays an appeal from this order to the Supreme Court of the United States, which is allowed to him, but upon the condition,
16 nevertheless, that he give bond on such appeal in the sum of five hundred dollars ($500).

And it is further ordered by the court that upon perfecting his appeal as aforesaid, the said petitioner be admitted to bail before a commissioner of the district court in the sum of five hundred dollars

($500) for his appearance before the circuit court of the United States for the district of Colorado, at the next term of said circuit court, and from day to day and from term to term thereafter, and to abide and fulfil the order of the Supreme Court of the United States and the said circuit court in all things touching the judgment aforesaid, and the custody of the sheriff of Arapahoe county of the said petitioner.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States within and for the District of Colorado.

In the Matter of the Application of Ed. H. REID for the Writ of *Habeas Corpus.* No. 4176.

Know all men by these presents, that we, Ed. H. Reid, as principal, and William E. Hughes and Elijah Bosserman, as sureties, are held and firmly bound unto the United States of America, in
17 the full and just sum of five hundred dollars ($500) to be paid to the United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this first day of July, in the year of our Lord, nineteen hundred and one.

Whereas, lately at the May term, A. D. 1901, of the circuit court of the United States for the district of Colorado, in a suit depending in said court, wherein Ed H. Reid was petitioner in his application to the said court for the writ of *habeas corpus* against his detention by the sheriff of Arapahoe county, Colorado, upon an alleged violation of the Constitution of the United States, and of the laws of the United States, by virtue of a mittimus theretofore issued by the district court of the State of Colorado, sitting within and for the county of Arapahoe wherein in said the circuit court of the United States for the district of Colorado, judgment was rendered against the said Ed. H. Reid, petitioner therein, overruling the demurrer of the said Ed. H. Reid to the return of the sheriff of Arapahoe county, and remanding the said Ed. H. Reid to the custody of said sheriff of said Arapahoe county, and wherein the said Ed. H. Reid has obtained an appeal from the Supreme Court of the United States to reverse the judgment herein.

18 Now the condition of the above obligation is such, that if the said Ed. H. Reid shall appear, either in person or by attorney, in the Supreme Court of the United States on such day or days as may be appointed for the hearing of said cause in said court, and prosecute his said appeal, and shall abide by and obey all orders made by the Supreme Court of the United States in said cause, and shall surrender himself in execution of the judgment appealed from as said court may direct, if the judgment against him shall be affirmed, and if he shall appear in the circuit court of the United States for the district of Colorado at the next term thereof, and on such day or days as may be appointed by said circuit court

of the United States and abide by and obey all orders made by said court, provided the judgment against him shall be reversed by the Supreme Court of the United States; then the above obligation to be void, otherwise to remain in full force, virtue, and effect.

EDWARD H. REID. [SEAL.]
WILLIAM E. HUGHES. [SEAL.]
ELIJAH BOSSERMAN. [SEAL.]

Approved July 1st, 1901.
ADOLPHUS B. CAPRON,
United States Commissioner for the District of Colorado.

19 (Endorsed:) No. 4176—In the circuit court of the United States within and for the district of Colorado—In the matter of the application of Ed. H. Reid for the writ of *habeas corpus*—Bond for appearance of petitioner—Filed Jul- 1, 1901, Robert Bailey, clerk—Talbot, Denison, and Wadley, attorneys for petitioner.

Know all men by these presents: that we, Ed. H. Reid, as principal, and Jno. W. Springer and G. H. Adams as sureties, are held and firmly bound unto Robert J. Jones, sheriff of Arapahoe county, Colorado, in the full and just sum of five hundred (500) dollars, to be paid to the said Robert J. Jones, sheriff as aforesaid, his executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and admin-
20 istrators, jointly and severally by these presents. Sealed with our seals and dated this eighth day of July in the year of our Lord one thousand nine hundred and one.

Whereas, lately at a term of the circuit court of the United States for the district of Colorado, in a suit depending in said court, upon a petition of the said Ed. H. Reid for a writ of *habeas corpus*, a judgment was rendered remanding the said Ed. H. Reid to the custody of Robert J. Jones, sheriff of Arapahoe county, Colorado, respondent in said cause, and the said Ed. H. Reid having obtained an order allowing an appeal to the Supreme Court of the United States and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Robert J. Jones, sheriff as aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date hereof.

Now the condition of the above obligation is such that if the said Ed. H. Reid shall prosecute said appeal to effect, and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ED. H. REID. [SEAL.]
21 JNO. W. SPRINGER. [SEAL.]
G. H. ADAMS. [SEAL.]

Sealed and delivered in presence of—
ROBERT BAILEY.
LEONARD DATES.

Approved by—
MOSES HALLETT, *Judge*.

(Endorsed:) 4176—In the circuit court of the United States for the district of Colorado, sitting at Denver—In the matter of the application of Ed. H. Reid for a writ of *habeas corpus*—Appeal bond—Filed Jul- 8, 1901, Robert Bailey, clerk—Talbot, Denison, and Wadley, attorneys for petitioner.

22 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

In the Matter of the Application of ED. H. REID for a Writ of *Habeas Corpus.*

The clerk will prepare a transcript of the record in this cause on appeal to the Supreme Court of the United States, at Washington, composed of the following pleadings and proceedings, to wit:

Petition for a writ of *habeas corpus* of Ed. H. Reid.

The issuance of a writ of *habeas corpus.*

The return of the respondent to said writ.

The demurrer of petitioner to said return of respondent.

Orders of hearing, judgment, and order of court overruling said demurrer and remanding Ed. H. Reid to the custody of the — Robert J. Jones, sheriff of Arapahoe county, Colorado.

Exceptions to judgment and order.

Appeal prayed to Supreme Court of the United States.

Order for bail bond;

Order for appeal bond.

Allowance of appeal to Supreme Court of the United States.

Permission to attach to bill of exceptions Exhibits A, B, C, D, and E.

Assignments of error.

Citation,

23 Certificate.

Approval and filing of bail bond.

Approval and filing of appeal bond.

TALBOT, DENISON AND WADLEY,
Attorneys for Petitioner, Ed. H. Reid.

(Endorsed:) 4176—U. S. circuit court—*In re* petition of Ed. H. Reid for writ of *habeas corpus*—Praecipe—Filed Jul- 8, 1901—Robert Bailey, clerk.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the United States Circuit Court within and for said District.

In the Matter of the Application of Ed. H. Reid for a Writ of *Habeas Corpus.*

Comes now the said Ed. H. Reid, petitioner herein, by Talbot, Denison and Wadley, his attorneys, and objects to the order and

judgment of the court this day made in the above-entitled cause, and assigns the following errors therein, to wit:

1. The court erred in overruling the demurrer of the said
24 Ed. H. Reid, petitioner, to the return of Robert J. Jones, respondent herein, sheriff of Arapahoe county, State of Colorado.

2. The court erred in remanding the said Ed. H. Reid, petitioner, to the custody of Robert J. Jones, respondent herein, sheriff of Arapahoe county, State of Colorado, and in dismissing said petition.

3. The conviction of petitioner, Ed. H. Reid, in the district court of the State of Colorado was illegal, and he should have been discharged by this court from said imprisonment for the reason that the statute of the State of Colorado, approved March 21, 1885, and under which he was prosecuted and convicted is repugnant to the provision of the Constitution of the United States giving Congress power to regulate commerce among the States (U. S. Cons. art I, sec. 8 subd. 3) as well as to the provision declaring that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States (U. S. Cons. art. 4 sec. 2).

4. The Congress of the United States having passed an act establishing a Bureau of Animal Industry (Supp. R. S. U. S. vol. 1, 435 chap. 60 secs. 3, 6, and 9) and said Bureau of Animal Industry having promulgated its rules in pursuance of said act in the regulation of the exportation from this country and the importation into this country and the transportation of domestic animals from one State into another, this court erred in not declaring the act
25 of the General Assembly of the State of Colorado (Session Laws, 1885, page 343) under which this prosecution was had, to be null and void, as imposing unnecessary burdens and restrictions upon interstate commerce in the following particulars, to wit:

(A.) It works a detention of cattle already inspected by the Federal authorities and to which a bill of health has already been issued by such Federal authorities.

(B.) It places a burden upon interstate commerce by the imposition of fees upon the shipper for such additional State inspection.

(C.) It is an unwarrantable and unnecessary interference with the transportation of cattle from one State into another, a matter wholly within the final and exclusive jurisdiction of Congress under the laws of the United States.

(D.) Since the act of Congress and the rules and regulations of the Bureau of Animal Industry have undertaken to control the matter of the quarantine and inspection of cattle in transportation from one State to another, such transportation becomes, *ipso facto*, interstate commerce, and no State can legislate therein, either by passing laws conflicting with such congressional acts and rules and regulations, or imposing restrictions or burdens thereon under the guise of police or quarantine regulations.

(E.) To permit the States of the Union to impose upon the
26 shipper of cattle, billed for transportation from one State to another and holding a United States certificate or bill of health to such cattle subjects the shipper to the stoppage and deten-

tion of his cattle upon the State line of all intermediate States, and subjects him to the payment of fees for such inspection, notwithstanding the fact that his cattle are, as Mr. Reid's cattle were, actually free from contagious or infectious disease, and notwithstanding the fact that the shipper holds a certificate of freedom from such infectious or contagious diseases, issued by inspectors of the Bureau of Animal Industry, under authority of the act of Congress hereinbefore cited.

5. The court erred in failing and refusing to sustain petitioner's demurrer to the sufficiency of the return of respondent herein.

6. The court erred in failing and refusing to order petitioner to be discharged from the custody of the sheriff, and in dismissing the petition.

Wherefore, this petitioner prays that the order and judgment aforesaid may be reversed, annulled, and altogether holden for naught, and that he be discharged from custody, and that the statute of the State of Colorado be declared to be null and void as an unwarranted interference with interstate commerce.

TALBOT, DENISON AND WADLEY,
Att'ys for Pl'ff.

(Endorsed:) 4176—In the United States circuit court for the district of Colorado—In the matter of the application of Ed. H. Reid for a writ of *habeas corpus*—Assignment of errors—Filed Jul. 10, 1901—Robert Bailey, clerk—Talbot, Denison, and Wadley, att'ys for petitioner.

27 *Bill of Exceptions.*

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In the Circuit Court of the United States for the District of Colorado.

In the Matter of the Application of ED. H. REID for a Writ of *Habeas Corpus.*

Appearances: Talbot, Denison and Wadley, attorneys for petitioner; C. C. Post, attorney general of the State of Colorado; Caesar A. Roberts and T. E. McIntyre, attorneys for respondent.

Be it remembered, that on the 29th day of June, A. D. 1901, the same being one of the regular juridical days of the May term, 1901, of said court, the above-entitled cause came on in its order for hearing upon the petitioner's demurrer to the return of respondent herein; whereupon, it was stipulated in open court that certain memoranda, to wit, certain rules and regulations concerning cattle transportation issued by the authority and under the direction of the Bureau of Animal Industry of the United States Department of Agriculture, marked Exhibit A, and a certain Government certificate or Federal bill of health issued to said Ed. H. Reid, upon the 882 head of cattle by him imported into Colorado and consigned to

Moorcroft, State of Wyoming, and issued by a United States
28 inspector of the Bureau of Animal Industry, marked Exhibit B—and a certain letter of Hon. D. E. Salmon, chief of the Bureau of Animal Industry, marked Exhibit C, and a certain quarantine proclamation of the Honorable James B. Orman, governor of the State of Colorado marked Exhibit D, and certain quarantine regulations for the State of Colorado for the year 1901, issued by the authority and under the order and direction of the Colorado veterinary sanitary board, marked Exhibit E, be considered by the court and that the same be made a part of the record herein; said exhibits being respectively in words and figures, as follows, to wit:

EXHIBIT A.

United States Department of Agriculture.

(B. A. I. order No. 80.)

Regulations Concerning Cattle Transportation.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *December* 10, 1900.

To managers and agents of railroads and transportation companies of the United States, stockmen, and others:

In accordance with section 7 of the act of Congress approved May 29, 1884, entitled "An act for the establishment of a Bureau of Animal Industry, to prevent the exportation of diseased cattle, and provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," and of the act of Congress approved May 25, 1900, making appropriation for the Department of Agriculture for the fiscal year ending June 30, 1901, you are hereby notified that a contagious and infectious disease known as splenetic, Southern or Texas fever exists among cattle in the following-described area:

29 1. All that country lying south, or below, a line beginning at the northwest corner of the State of California; thence east south and southeasterly along the boundary line of said State of California to the southeastern corner of said State; thence southerly along the western boundary line of Arizona to the southwest corner of Arizona; thence along the southern boundary lines of Arizona and New Mexico to the southeastern corner of New Mexico; thence northerly along the eastern boundary of New Mexico to the southern line of the State of Colorado; thence along the southern boundary lines of Colorado and Kansas to the southeastern corner of Kansas; thence southerly along the western boundary line of Missouri to the southwestern corner of Missouri; thence easterly along the southern boundary line of Missouri to the western boundary line of Dunklin county; thence southerly along the said western boundary to the southwestern corner of Dunklin county; thence easterly along the southern boundary line of Missouri to the Missis-

sippi river; thence northerly along the Mississippi river to the northern boundary line of Tennessee at the northwest corner of Lake county; thence easterly along said boundary line to the northeast corner of Henry county, thence in a northerly direction along the boundary of Tennessee to the northwest corner of Stewart county; thence in an easterly direction along the northern boundary of Tennessee to the southwestern corner of Virginia; thence northeasterly along the western boundary line of Virginia to the northernmost point of Virginia; thence southerly along the eastern boundary line of Virginia to the northeast corner of Virginia, where it joins the southeastern corner of Maryland, at the Atlantic ocean.

2. Whenever any State or Territory located above or below said quarantine line, as above designated, shall duly establish a different quarantine line, and obtain the necessary legislation to enforce said last-mentioned line strictly and completely within the boundaries of said State or Territory, and said last above mentioned line and the measures taken to enforce it are satisfactory to the Secretary of Agriculture, he may, by a special order, temporarily adopt said State or territorial line.

Said adoption will apply only to that portion of said line specified, and may cease at any time the Secretary may deem it best for the interests involved, and in no instance shall said modification exist longer than the period specified in said special order; and at the expiration of such time, said quarantine line shall revert without further order to the line first above described.

Whenever any State or Territory shall establish a quarantine line for above purposes differently located from the above-described line, and shall obtain by legislation, the necessary laws to enforce the same completely and strictly, and shall desire a modification of the Federal quarantine line to agree with such State or territorial line, the proper authorities of such State or Territory shall forward to the Secretary of Agriculture a true map or description of such line and a copy of the laws for enforcement of same, duly authenticated and certified.

3. From the first day of January, 1901, no cattle are to be transported from said area south, or below, said Federal quarantine line above described to any portion of the United States above—north, east or west of the above-described line, except as hereinafter provided.

4. Cattle from said area may be transported by rail or boat for immediate slaughter, and when so transported the following regulations must be observed.

(*a.*) When any cattle in course of transportation from said area are unloaded above—north, east or west of—this line to be fed or watered, or for other purposes, said cattle shall be placed in pens or yards set apart for infected cattle, and no other cattle shall be admitted thereto.

(*b.*) On unloading said cattle at their points of destination chutes, alleyways, and pens, sufficiently isolated, shall be set apart to receive them, and no other cattle shall be admitted to said chutes, pens and alleyways; and the regulations relating to the movement

of cattle from said area, prescribed by the cattle sanitary officers of the State where unloaded, shall be carefully observed. The
31 cars or boats that have carried said stock shall be cleansed and disinfected as soon as possible after unloading and before they are again used to transport, store or shelter animals or merchandise.

(*c.*) All cars carrying cattle from said area shall bear printed placards, the letters of which shall be plain and not less then 1½ inches in height, to be affixed by the railroad company hauling the same, stating that said cars contain southern cattle; and each of the waybills, conductors' manifests, and bills of lading of said shipments by cars or boats shall have a note plainly written or stamped upon its face with a similar statement. Whenever any cattle have come from said area and shall be reshipped from any point at which they have been unloaded to other points of destination the cars carrying said animals shall bear similar placards with like statements and the waybills, conductors' manifests, or bills of lading, be so stamped. At whatever point these cattle are unloaded they must be placed in separate pens to which no other cattle shall be admitted.

(*d.*) No boat having on board cattle from said district shall receive on board cattle from outside of said district. Cattle from said district shall not be received on board when destined to points outside of said district where proper facilities have not been provided for transferring the said cattle from the landing to the stock yards and slaughter-houses without passing over public highways unless permission for such passing is first obtained from the local authorities.

(*e.*) The cars and boats used to transport such animals, the chutes, alleyways and pens used during transportation and at points of destination shall be disinfected in the following manner:

Remove all litter and manure. This litter and manure may be disinfected by mixing it with lime or saturating it with five per cent. solution of one hundred per cent. carbolic acid; or if not disinfected, it may be stored where no cattle can come in contact with it during the period from February 1 to November 15 of each year.

Wash the cars and the feeding and watering troughs with
32 water until clean.

Saturate the entire interior surface of the cars and the fencing, troughs, and chutes of the pens with a mixture made of 1½ pounds of lime and one-quarter pound of 100 per cent. straw-colored carbolic acid to each gallon of water; or a solution made by dissolving four ounces of chloride of lime to each gallon of water may be used; or disinfect the cars with a jet of steam under a pressure of not less than fifty pounds to the square inch.

5. Cattle from the Republic of Mexico may be admitted into the United States, after inspection according to law, as follows:

Cattle free from splenetic or Texas fever, and from contact therewith during the three months preceding such inspection, and which have been grazed in a locality free from infection of such fever, may be admitted into any part of the United States. If destined to

points in the non-infected area, a special permit must be obtained from an inspector of the Bureau of Animal Industry, said permit being issued according to the regulations of said bureau; the cattle for which said permit is issued must not be driven through the affected area, nor be unloaded in any part thereof except at such a point as may be duly designated by an order issued by this department; if shipped in infected cars, or unloaded in the infected area, except as above stated, they will be subject to the regulations concerning infectious cattle.

6. Notice is hereby given that cattle infested with the *Boophilus bovis*, or southern cattle tick, disseminate the contagion of splenetic, Southern, or Texas fever, therefore cattle originating outside of the district described by this order, or amendments thereof, and which are infested with the *Boophilus bovis* ticks, shall be considered as infectious cattle and shall be subject to the rules and regulations governing the movement of southern cattle.

7. Stock yard companies receiving cattle infested with said ticks shall place such cattle in the pens set aside for the use of southern cattle, and transportation companies are required to clean and
33 disinfect all cars and boats which have contained the same, according to the requirements of this department.

8. Inspectors are instructed to see that disinfection is properly done, and to report instances of improper disinfection. It is expected that transportation and stock-yard companies will promptly put into operation the above methods.

All prior orders conflicting herewith are hereby revoked.

JAMES WILSON, *Secretary.*"

(B. A. I. order No. 80, amendment No. 10.)

Regulations Concerning Cattle Transportation.

Feeding stations at Fort Worth and Baird, Texas; Bakersfield, California, and Salisbury, North Carolina.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *January* 31, 1901.

It is hereby ordered, that cattle originating outside, north, east and west of the quarantine line as defined in Bureau of Animal Industry order No. 80 (December 10, 1900), or amendments thereto and which are to be transported by rail through the quarantined district, which may be unloaded for rest, feed and water into uninfected pens set apart for such cattle at Union stock yards, Fort Worth and Baird, Texas; Bakersfield, California; and at Salisbury, North Carolina providing the cattle are free from southern cattle ticks and have not been unloaded at any other place within the quarantined district. They may, after unloading into said pens, be reloaded into the same cars from which unloaded, or into other cleaned and disinfected cars, and reshipped as uninfected cattle.

All prior orders conflicting herewith are hereby revoked.

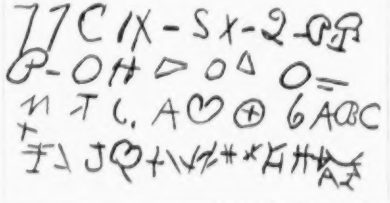
JAMES WILSON, *Secretary.*

(Amendments Nos. 1 to 9 were issued as B. A. I. orders Nos. 81 to 89.)

34 EXHIBIT B.

"UNITED STATES DEPARTMENT OF AGRICULTURE,
BUREAU OF ANIMAL INDUSTRY, No. B, 44,
HEREFORD, TEXAS, *June* 18, 1901.

This is to certify that I have this day carefully inspected 882 head of neat cattle, marked, branded and classified as follows:

Number.	Age.	Kind.	Ranch brands, R. or L. side.	Shippers' brands.
882	2 yr.	Steers.		Either side.

and find them free from Texas, or splenetic fever infection (*Boophilus bovis*) or any other infectious or contagious disease.

The above-described 882 cattle are from the counties of Lubbock and Cochran, State of Texas, and no Texas fever infection is known to exist where they have been kept or on the trail over which they have passed.

To Moorcroft, Wyo.

ARTHUR C. HART,
Ass't Inspector, Bureau of Animal Industry.

Animals which have been inspected and certified by an inspector of the U. S. Bureau of Animal Industry, and are free from disease have the right to go into any State, and be sold for any purpose, without further inspection or the exaction of fees."

EXHIBIT C.

U. S. DEPARTMENT OF AGRICULTURE,
BUREAU OF ANIMAL INDUSTRY,
No. 5712. WASHINGTON, D. C., *December* 5, 1899.

35 Mr. Albert Dean, Kansas City, Kansas.

SIR: Referring to the letter of Mr. Taylor Riddle, secretary live stock sanitary commission of Kansas, of November 8, 1899, addressed to you, and which you forwarded under date of November

9, for my information, I would say that I have not issued instructions at an earlier date regarding the points raised by Mr. Riddle, as I desired to carefully examine the decisions of the Supreme Court bearing upon the right of the States to levy inspection fees or taxes upon articles of interstate commerce. Having gone over the decisions bearing upon this subject, I am of the opinion that the Supreme Court has definitely decided that such charges are unconstitutional, and that it is equally unconstitutional for the State to inspect cattle before such animals reach its borders, especially where Congress has already acted and there is a Federal inspection in operation.

While it is the desire of this department to co-operate with the live stock sanitary boards of the different States, it would be clearly improper to go beyond legitimate co-operation and assist any State board in unjustly and illegally collecting fees from persons engaged in interstate commerce. For this reason you will please have the bureau inspectors inspect animals going from one State to another in all cases where they are offered to them for inspection or where they come under their observation and in case information is asked by the shippers as to their rights you will say to them that it is the opinion of this department that the collection of such fees by any State board is unconstitutional, and that animals which have been inspected and certified by the department inspectors have the right to go into any State and be sold without the exaction of further inspection or inspection fees. After such cattle have gone into a State and have been sold and have become a part of the property of the State, they are subject to State laws the same as animals native to that State.

While saying this, it should be understood that there is no desire on the part of the department to cause friction between its
36 inspection service and the inspection service of any State, and that consequently, you are to be conservative in your action and in your remarks concerning the State regulations. At the same time it is due to those engaged in the interstate shipment of cattle that the views of this department be known, and above all that the Federal inspectors take no part in forcing upon such shippers an inspection for which a local fee is demanded.

Very respectfully, D. E. SALMON,
Chief of Bureau.

EXHIBIT D.

Quarantine Proclamation.

Whereas, under the provisions of the law of this State, the State veterinary sanitary board has this day reported to me that certain contagious and infectious diseases exist in certain localities, and that there are conditions which render domestic animals from such localities liable to convey such disease, it is therefore ordered that the importation into this State of all live stock from said localities shall be prohibited, unless accompanied by a certificate of health given by the State veterinary sanitary board or its duly authorized agents, who shall examine and inspect all such live stock under the rules

and regulations authorized by law and adopted by the State veterinary sanitary board hereto attached.

And I do hereby warn all corporations, persons and companies preceding the arrival at the boundary line of the State of Colorado, of all such cattle as come within the provisions of this proclamation, to give due and full notice thereof to the secretary of the State veterinary sanitary board or the board's duly authorized inspectors.

In witness whereof, I have hereto set my hand and caused
37 the seal of the State of Colorado to be affixed at Denver, Colorado, this sixth day of May, 1901.

JAMES B. ORMAN, *Governor.*

Attest: DAVID A. MILLS,
Secretary of State.

Exhibit E.

State of Colorado:

Cattle Quarantine Regulations for 1901.

By order of the State veterinary sanitary board.

Bradford H. Du Bois, president, Denver, Colorado.
J. W. Bowles, vice-president, Littleton, Colorado.
Edwin R. Stark, Colorado Springs, Colorado.
Dr. A. B. McCapes, secretary and State veterinary surgeon, the Capitol, Denver, Colorado.

Denver, Colo., *May* 4, 1901.

The following regulations will govern the admission of southern cattle into the State of Colorado during the year 1901, or until further notice:

First. All persons desirous of bringing cattle into or through the State of Colorado from the States of Texas and California and the Territory of Oklahoma, or from any other State or Territory, or portions of any other State or Territory, lying south of the thirty-six parallel of north latitude, between the first day of April and the first day of November, must show by affidavit of two responsible parties whose reliability shall be certified to by the clerk of a county or district court, or by a duly qualified notary public:

(*a.*) Name and post-office address of the owner, consignor and consignee.

(*b.*) The brand or brands on all of said cattle.

(*c.*) The county or counties and State in which said cattle
38 have been held during the preceding ninety days, and the total number demanding entry.

Second. Each railroad shipment, or herd, if driven, must be accompanied by a certified copy of the original affidavit.

Third. Unless satisfactory proof is presented to the State veterinary sanitary board, or to one of its duly authorized inspectors, that said cattle have been held at least ninety days above a line drawn as below, known as Government fever line, such cattle will be

deemed liable to convey Texas or splenetic fever, and will be refused admittance into or through Colorado, and any attempt to bring, drive, or cause to be brought or driven, such animals into the State will be a violation of the rules and regulations of this board, and will render any person or persons so violating or attempting to violate these regulations subject to the penalties prescribed by law for any infringement thereof, and such animals so brought into the State contrary to these regulations will be held in quarantine, at the risk and expense of the owner, for such period as may be deemed necessary by said board.

The above-mentioned fever line shall commence on the Pacific coast at the northern boundary line of Monterey county; thence easterly along the northern boundary line of Monterey and San Benito counties to the western boundary of Merced county; thence northerly, easterly and southerly along the western, northern and eastern boundary line of Merced county to the southeast corner thereof; thence northeasterly along the northern boundary of Madera county to the northeast corner thereof; thence southerly and easterly along the eastern boundary of Madera, Fresno and Tulare counties to the southeast corner of Tulare county; thence easterly along the southern boundary line of Inyo county to its intersection with the eastern boundary line of the State of California; thence southerly along the eastern boundary line of California to southeast corner of said State; thence southerly along the western boundary of Arizona to the southwest corner of said State; thence easterly along the southern boundary lines of Arizona and New Mexico to the intersection of the southern
39 boundary of New Mexico with the international boundary line at the Rio Grande river; thence southeasterly along the said international boundary line to the southwest corner of the county of Pecos; thence following the western boundary of Pecos county to the southeast corner of Reeves county; thence following the boundary line between the counties of Pecos and Reeves to the Pecos river; thence southeasterly, following the Pecos river, to the northwest corner of Crockett county; thence east along the northern boundary of Crockett and Schleicher counties to the southeastern corner of Irion county; thence north along eastern boundary of Irion county to the northeast corner of said county; thence north to the southern boundary of Coke county; thence west to the southwest corner of Coke county; thence north along the western boundary of Coke county to the southern boundary of Mitchell county; thence east to the southeastern corner of Mitchell county; thence north along the eastern boundary of Mitchell county to the northeast corner of said county; thence east along the southern boundaries of Fisher and Jones counties to the southeast corner of Jones county; thence north along the eastern boundary of Jones county to the northeast corner of said county; thence east along the southern boundary of Haskell county to the southeast corner of said county; thence north along the western boundary lines of Throckmorton and Baylor counties to the northwest corner of Baylor county; thence east along the southern boundary of Wilbarger county to the

southeast corner of said county; thence north along the eastern boundary of Wilbarger county to the Red river; thence continuing in a northwesterly direction along the course of said river and the northern boundary of Texas to the southeast corner of Greer county; thence northerly following the course of the North fork of the Red river to its intersection with the southern boundary line of Roger Mills county along the western boundary lines of the Apache, Comanche and Kiowa Indians reservations; thence east along the southern boundary lines of Roger Mills and Washita counties to the intersection with the boundary line of Wichita Indian reservation on the Washita river; thence north along the
40 western boundary line of said reservation to its northwest corner at its intersection with the Canadian river in the county of G.; thence in a southeasterly direction along the course of said river and the northern boundary of the Wichita Indian reservation to the northeast corner of said reservation; thence easterly along the southern boundary of Canadian county to the southeast corner of said county; thence north along the easterly boundary lines of Canadian and Kingfisher counties to the 36th parallel.

Fourth. It is however, provided that cattle from below the above-mentioned fever line may enter this State by rail for immediate slaughter, provided a permit is first obtained from this board, or one of its duly authorized inspectors, to be granted upon the affidavit of the owner, consignor or consignee, or official of railway company transporting such cattle, that such cattle are intended only for immediate slaughter, and that the following regulations in respect to such cattle will be fultilled.

(1.) When any cattle in course of transportation from said area are unloaded above, north or west of this line to be fed or watered, the places where said cattle are to be fed or watered shall be set apart and no other cattle shall be admitted thereto.

(2.) On unloading said cattle at their points of destination, pens shall be set apart to receive them, and no other cattle shall be admitted to said pens; and the regulations relating to the movement of Texas cattle prescribed by the cattle sanitary officers of the State where unloaded, shall be carefully observed. The cars that have carried said stock shall be cleansed and disinfected before they are again used to transport, store or shelter animals or merchandise.

(3.) All cars carrying cattle from said area shall bear placards stating that said cars contain southern cattle, and each of the way-bills of said shipment shall have a note upon its face with a similar statement. Whenever any cattle have come from said area and shall be reshipped from any point at which they have been unloaded to
other points of destination, the cars carrying said animals
41 shall bear similar placards with like statements, and the way-bills be so stamped. At whatever point these cattle are unloaded they must be placed in separate pens to which no other cattle shall be admitted.

(5.) The cars used to transport such animals, and the pens in which they are fed and watered, and the pens set apart for their re-

ception at points of destination, shall be disinfected in the following manner:

(*a.*) Remove all litter and manure. This litter and manure may be disinfected by mixing it with lime or saturating it with a 5 per cent. solution of carbolic acid, or if not disinfected, it may be stored where no cattle can come in contact with it until after November 15.

(*b.*) Wash the cars and the feeding and watering troughs with water until clean.

(*c.*) Saturate the walls and floors of the cars and the fencing, troughs and chutes of the pens, with a solution made by dissolving four ounces of chloride of lime to each gallon of water. Or disinfect the cars with a jet of steam under a pressure of not less than 50 pounds to the square inch.

Fifth. All cattle from the States of Texas and California and the Territory of Oklahoma, or from any portions of any other State or Territory below the 36th parallel of north latitude desiring entrance into Colorado, either for grazing, feeding or immediate slaughter, between the 1st day of April and the 1st day of November whether for the purpose of remaining in said State or for the purpose of traveling through said State to other States or Territories, by rail or by trail, will be inspected before entering the State of Colorado, and if the above conditions have been fulfilled, a certificate of health will be granted, or in the case of slaughter cattle, a permit. Cattle will be inspected before loading, if sufficient notice is given to the State veterinary surgeon, the capitol, Denver, or to any of the duly authorized inspectors of the board who will, with their
42 deputies, be stationed as follows: P. J. Towner, East Las Vegas, N. M. and Wm. Berryman, Amarillo, Texas: (otherwise cattle will be required to be unloaded at Folsom, on the line of the Union Pacific, Denver & Gulf railroad, or at Raton, on the Atchison, Topeka & Santa Fe railroad.)

Sixth. Cattle coming into the State by trail will be required to cross the State line at or near the Point of Rocks, or at any other point to be agreed upon after conferring with secretary of this board, and must be inspected before entering Colorado. Due notice of intention to cross the State line must be given to the secretary or to Inspector Berryman, Amarillo, Texas, or Inspector Towner, East Las Vegas, N. M.

Seventh. To defray the expense of inspection, a fee of one and one-half cents (1½) per head will be charged, payable before a certificate of health or a beef permit is issued.

Eighth. The fee for the inspection of cattle destined for Kansas will be two cents per head.

Ninth. Cattle from the Republic of Mexico shall be admitted into and through Colorado after having been inspected and certified to be free from Southern cattle-fever infection (boophilus bovis) by the United States inspector of the Bureau of Animal Industry, and after having passed the State inspector of Colorado and receiving his bill of health.

Tenth. Any person or corporation who shall violate, disregard or

evade or attempt to violate, disregard or evade any provisions of the statutes governing stock sanitary inspection, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in the sum of not less than one hundred and not more than five thousand dollars ($5,000), or imprisonment in the county jail not less than three months nor more than two years, or by both such fine and imprisonment.

Blank affidavits will be furnished upon application to the secretary of the board, the capitol, Denver.

THE STATE VETERINARY SANITARY BOARD OF COLORADO.
B. H. DUBOIS, *President.*

43 HELENA, MONTANA, *May* 1, 1901.

Dr. A. B. McCapes, secretary, State veterinary surgeon:

All cattle holding certificates of health issued by the Colorado veterinary sanitary board will be admitted into the State of Montana without further inspection.

M. E. KNOWLES,
State Veterinarian of Montana.

All cattle holding certificates of health issued by the Colorado veterinary sanitary board will be admitted into the State of Kansas without further inspection.

M. C. CAMPBELL,
Pres. Live Stock Sanitary Com. of Kansas.

Affidavit of Two Responsible Parties.

We —— —— and —— —— citizens of the county of —— and State of —— do hereby certify that we know — head of cattle branded — and owned by —— —— whose post-office address is —— county of —— State of —— to have been held during the ninety days preceding this date, in the county of —— State of ——. The said cattle are about to be shipped from —— to —— consigned by —— —— to —— ——.

—— ——.
—— ——.

Certificate of Clerk or Notary Public.

I hereby certify that the parties whose signatures appear to the foregoing affidavit are personally known to me to be reputable and responsible citizens.

Dated —— 190–.

—— ——.

44 And thereupon the court overruled the demurrer to the return of respondent, and remanded the prisoner to the custody of the sheriff of Arapahoe county, Colorado; and dismissed the petition; to the overruling of which demurrer and to the

said order remanding the prisoner and to the order of dismissal of the petition the said Ed. H. Reid, by his counsel, then and there reserved his exceptions, and prayed his appeal to the Supreme Court of the United States which was allowed; and the court then ordered that said exhibits be admitted as part of the record herein.

And now, forasmuch as the above and foregoing matters and things do not fully appear of record herein, petitioner, Ed. H. Reid, presents this, his bill of exceptions, and prays the court that the same may be signed, sealed and made a part of the record herein.

MOSES HALLETT,
Circuit Judge.

O K.
T. E. McINTYRE.
CHAS. C. POST,
Att'y General.

(Endorsed:) 4176—In the U. S. circuit court—In the matter of the petition of Ed. H. Reid—Bill of exceptions—Filed Jul- 12, 1901—Robert Bailey, clerk.

45 UNITED STATES OF AMERICA, *ss:*

To Robert J. Jones, sheriff of the county of Arapahoe, in the State of Colorado, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein Ed. H. Reid is appellant and you are respondent, to show cause, if any there be, why the judgment rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this eighth day of July, in the year of our Lord one thousand nine hundred and one.

MOSES HALLETT, *Judge.*

On this 8th day of July, in the year of our Lord, one thousand nine hundred and one, personally appeared Dewey O. Bailey, U. S. marshal, before me, the subscriber, Adolphus B. Capron U. S. com'r, and makes oath that he delivered a true copy of the within citation to Robert J. Jones sheriff of Arapahoe county, July 8th, 1901.

Sworn to and subscribed the 8th day of July A. D. 1901.

{Seal of Adolphus B. Capron, United States Commissioner, Colorado.}

ADOLPHUS B. CAPRON,
United States Commissioner.

1 ser., 2.

15½ [Endorsed:] 4176. In the circuit court of the United States for the district of Colorado, sitting at Denver. In the matter of the application of Ed. H. Reid for a writ of *habeas corpus*. Citation. Filed Jul- 8 1901. Robert Bailey, clerk. Talbot, Denison & Wadley, attorneys for petitioner.

16 UNITED STATES OF AMERICA, *District of Colorado*, } ss:

I, Robert Bailey, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to forty-four (44) both inclusive, to be a true, perfect, and complete transcript and copy of the record and proceedings and of all thereof, heretofore filed or entered of record in said court, and in a certain cause lately in said court pending In the matter of the application of Ed. H. Reid for a writ of *habeas corpus*, as fully and completely as the same still remains on file and of record in my office at Denver.

Seal United States Circuit Court, District of Colorado.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at Denver in said district, this 16th day of July, A. D. 1901.

ROBERT BAILEY, *Clerk*,
By CHARLES W. BISHOP,
Deputy Clerk.

Endorsed on cover: File No. 18,240. Colorado C. C. U. S. Term No. 387. Ed. H. Reid, appellant, *vs.* Robert J. Jones, sheriff of the county of Arapahoe, Colorado. Filed July 29, 1901.

FILED
APR 7 1902
JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. ~~1147~~ 147. *Habeas Corpus.*

ED H. REID, APPELLANT,

vs.

ROBERT J. JONES, SHERIFF OF ARAPAHOE COUNTY, COLORADO, APPELLEE.

Appeal from the Circuit Court of the United States for the District of Colorado.

No. ~~5023~~ 269 *Criminal.*

ED H. REID, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF COLORADO, DEFENDANTS IN ERROR.

Writ of Error to the Supreme Court of the State of Colorado.

MOTION TO ADVANCE.

TALBOT, DENISON & WADLEY,
Attorneys for Appellant and Plaintiff in Error.

WILLIAM M. SPRINGER,
Of Counsel.

THE SMITH-BROOKS PTG. CO., DENVER.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 387. Habeas Corpus.

ED H. REID, APPELLANT,

vs.

ROBERT J. JONES, SHERIFF OF ARAPAHOE COUNTY, COLORADO, APPELLEE.

Appeal from the Circuit Court of the United States for the District of Colorado.

No. 592. Criminal.

ED H. REID, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF COLORADO, DEFENDANTS IN ERROR.

Writ of Error to the Supreme Court of the State of Colorado.

MOTION TO ADVANCE.

Comes the said appellant and the plaintiff in error in the above entitled causes, and moves this honorable court to advance said causes upon the docket and hear the same as one cause during the present term, as the convenience of the term will permit, or at the earliest time practicable, and for the reasons therefor, he says:

First—In the first named of the above causes Ed. H. Reid, the petitioner in the court below and appellant in this court, sued out a writ of habeas corpus. He had been tried, convicted, and sentenced to be confined in the common jail of Arapahoe county, in the state of Colorado, by the District Court of Arapahoe county, for the full period of six months from the 26th day of June, A. D. 1901, for violation of an act of the Colorado legislature, entitled "An act to prevent the introduction of any infectious or contagious diseases among the cattle and horses of this state," approved March 21, 1885. He states, in his petition, that his said imprisonment is illegal, and in violation of the Constitution of the United States and of the laws of the United States, in this, that in June, 1901, he loaded upon cars, in the state of Texas, 882 head of cattle, for shipment through the state of Colorado to the state of Wyoming; that said cattle had previously been inspected, according to the laws of the United States, and according to the rules and regulations of the United States department of agriculture, and that the said cattle had been duly certified by a duly authorized inspector of said department to be free from any infectious disease; but that, without his consent and against his will, said cattle were detained and inspected at the Colorado state line by inspectors of the said state, and inspection fees were demanded of him for such inspection, as provided in the said statute of said state, and that he refused to pay such inspection fees. For his failure and refusal to pay said fees he was arrested, tried, convicted and imprisoned as aforesaid.

Second—That said petitioner applied to the judge of the United States Circuit Court for the district of Colorado for a writ of habeas corpus, for the purpose of securing a release and discharge from said imprisonment. That his application was denied, and that he thereupon took an appeal to this honorable court.

Third—In the other of said mentioned causes, after his trial, conviction and imprisonment as above set forth, the said Ed. H. Reid took an appeal from the judgment and sentence of the said District Court of Arapahoe county to the Supreme Court of the said state of Colorado; and that, upon

a final hearing in said Supreme Court, the said judgment of the said District Court of Arapahoe county was affirmed.

Fourth—That the said Ed. H. Reid thereupon sued out a writ of error to the Supreme Court of said state, in said cause, and has filed the record in this court.

Fifth—That both of said causes arise out of the same transaction, and involve the same questions, namely, that the said statute of the state of Colorado and the inspections and fees required thereunder are in violation of the Constitution and laws of the United States and of the rules and regulations of the United States department of agriculture, with all of which the petitioner had complied.

Sixth—That the first of said causes arises out of a criminal prosecution, and the second is a criminal case, and such cases may be advanced by leave of this court, on motion of either party, under paragraph 3 of rule 26. But, in addition thereto, said causes involve or affect a matter of general public interest; and there are special and peculiar circumstances which require an early hearing and determination of said causes by this honorable court, namely, that there are many thousands of cattle which are shipped every year from one state to another, and that the double and useless inspection of cattle so shipped at every state line, under local state laws, is a grievous and harrassing burden upon and interference with such shipments and with lawful interstate commerce.

For the foregoing and other reasons, which will be apparent to the court, the said appellant and plaintiff in error moves this honorable court to advance these causes on the docket, and determine the same at the earliest time practicable, in order that all persons concerned may be fully and judicially advised as to their rights and duties in such cases.

Respectfully submitted,

RALPH TALBOT,
JOHN H. DENISON,
W. H. WADLEY,
Attorneys for Appellant and Plaintiff in Error in said causes.

WILLIAM M. SPRINGER,
Of Counsel.

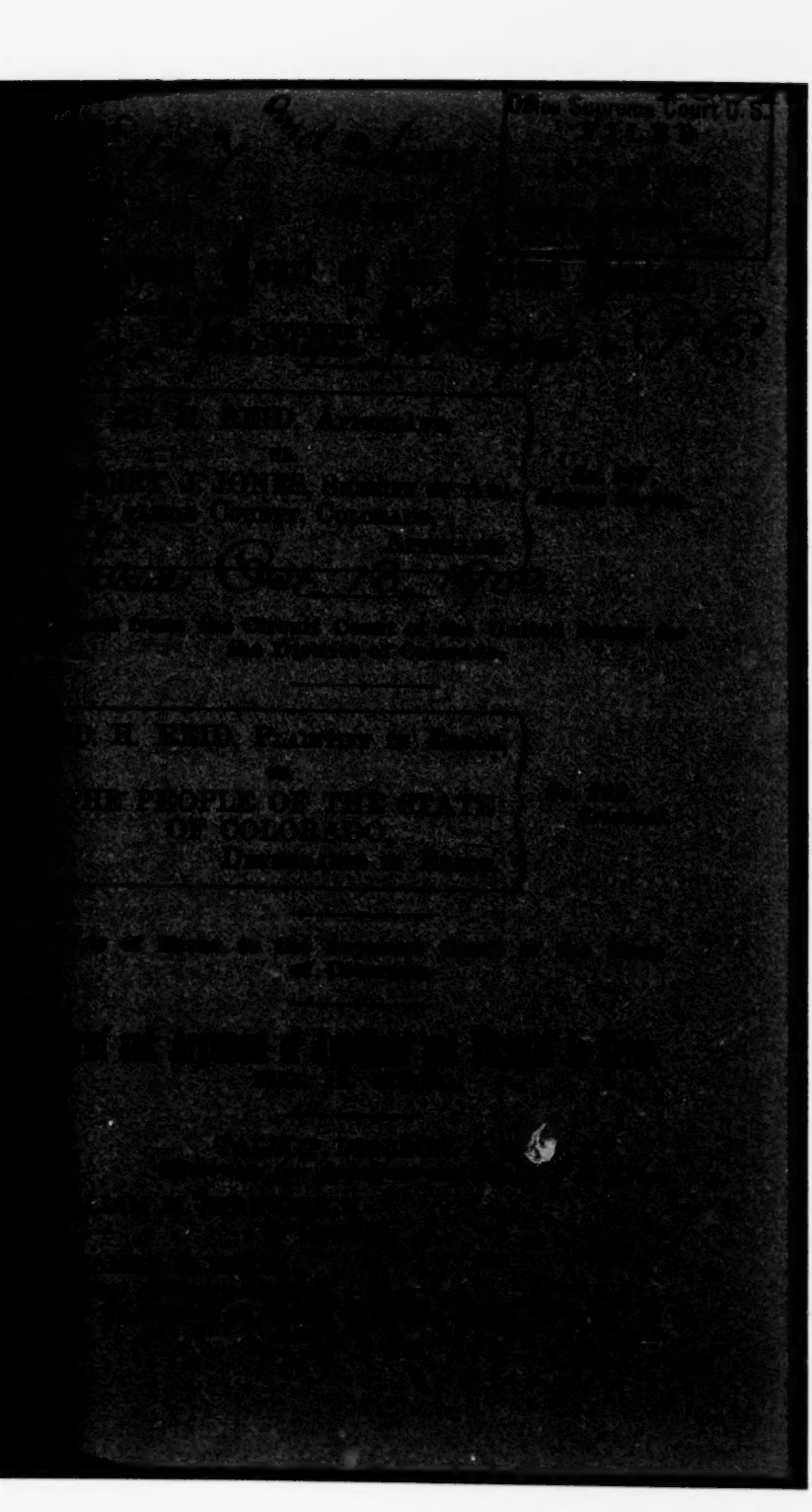
To Chas. C. Post, Esq., Attorney-General of Colorado, Attorney of Record for Appellee and Defendants in Error in said causes:

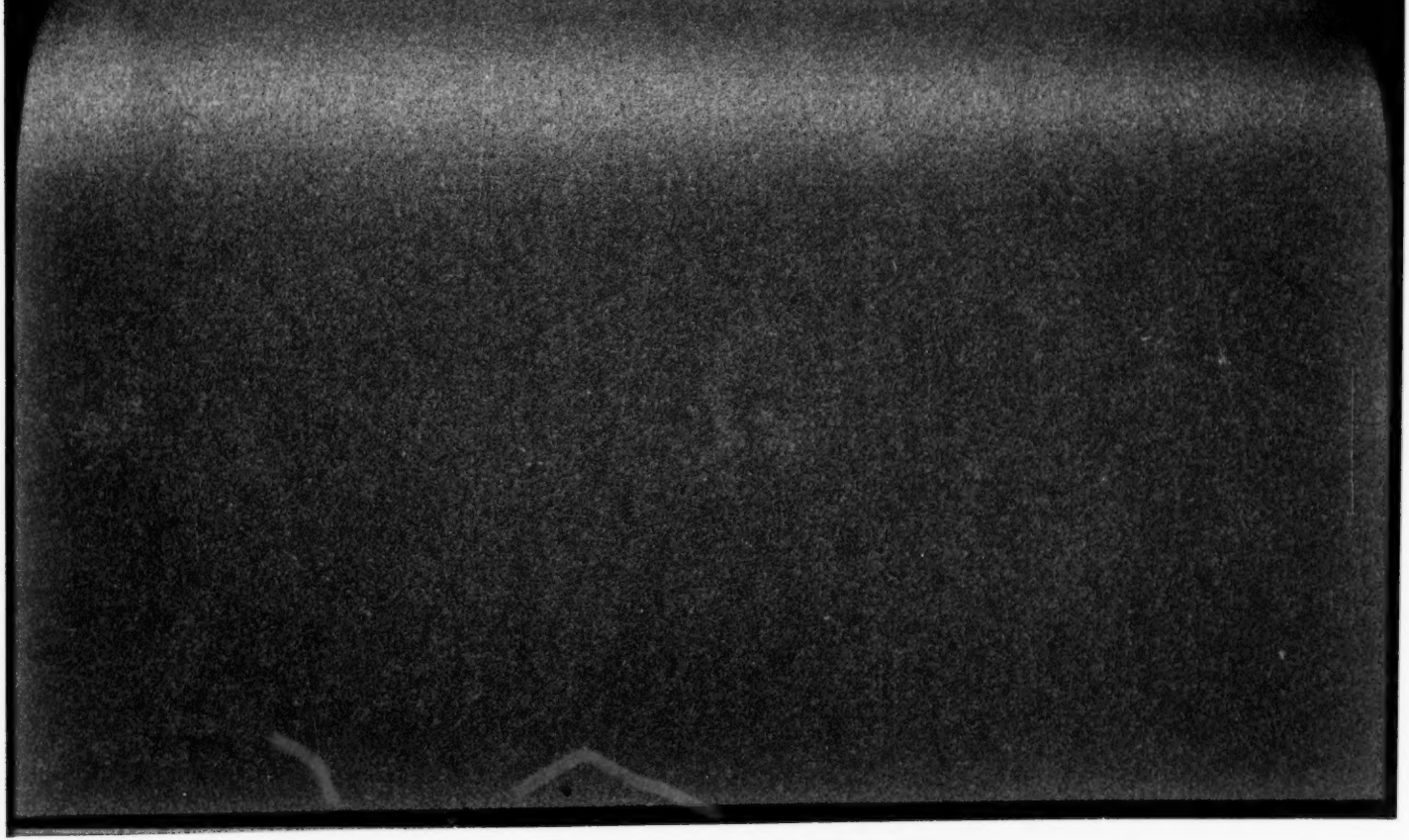
You are hereby notified that the appellant and plaintiff in error in the above entitled causes will, on Monday, the seventh day of April, A. D. 1902, on the meeting of the Supreme Court of the United States, in the city of Washington, or as soon thereafter as counsel can be heard, submit for the consideration of the court the foregoing motion.

RALPH TALBOT,
JOHN H. DENISON,
W. H. WADLEY,
Attorneys for Appellant and Plaintiff in Error.

Service of notice of the foregoing motion to advance is hereby acknowledged this 29th day of March, A. D. 1902.

CHAS. C. POST,
Attorney-General of Colorado,
Attorney for Appellee and Defendants in Error.





IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

ED. H. REID, *Appellant*, v. ROBERT J. JONES, SHERIFF OF ARAPAHOE COUNTY, COLORADO, *Appellee*.	*No.* 147. *Habeas Corpus.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

ED. H. REID, *Plaintiff in Error*, v. THE PEOPLE OF THE STATE OF COLORADO, *Defendants in Error*.	*No.* 269. *Criminal.*

WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF COLORADO.

BRIEF AND ARGUMENT OF APPELLANT AND PLAINTIFF IN ERROR, ED. H. REID.

STATEMENT OF FACTS.

The plaintiff in error and appellant was convicted and sentenced to the county jail for six months for violations

of the provisions of Section 2, of an act of the General Assembly of Colorado, entitled, "An act to prevent the introduction of any infectious or contagious disease among the cattle and horses of this State," approved March 21, 1885, and hereinafter set forth.

There is no dispute about the facts. The plaintiff in error, as charged in the information, on the 20th day of June, 1901, caused to be brought into the State of Colorado 882 head of cattle from the counties of Lubbock and Cochran, in the State of Texas, which are south of the so-called quarantine line fixed by the act, without having held the cattle at some place north of said line for a period of ninety days prior to their importation into this State, and also without having procured from an officer or agent of the State Veterinary Sanitary Board of the State of Colorado a certificate or bill of health.

Case No. 269, fols. 36–40, Trans. Rec.

On the 18th of June, 1901, when these cattle were shipped, the plaintiff in error obtained from the Inspector of the United States Bureau of Animal Industry at Hereford, Texas, the point of shipment, a certificate that the stock were free from all infectious disease, and that no Texas fever infection was known to exist where they had been kept, or on the trail over which they had passed. Attached to this certificate and below the officer's signature was a statement that animals which had been inspected and certified by an inspector of the United States Bureau of Animal Industry as free from disease have the right to go into any State without further inspection or the exaction of additional fees for the same.

Case No. 269, Exhib. B, Trans. Rec., fol. 48.

When, two days later, they reached the south boundary of Colorado, the cattle were, *vi et armis*, inspected by

an agent of the State veterinary board of Colorado—against the protest of plaintiff in error—but no certificate or bill of health was furnished to him, because he declined to pay the fee charged to cover the cost of inspection which was required by the specific regulations of the State board. Trial and conviction followed.

Neither in the act of Congress nor in the rules of the Secretary of Agriculture is the sweep, extent or limit of certificates issued by the Bureau of Animal Industry defined, save and except by D. E. Salmon, Chief of the Bureau of Animal Industry.

Case No. 269, Exhib. C, fols. 48-50, Trans. Rec.

The provisions of the Federal Constitution touching interstate commerce are as follows: "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

U. S. Const., Art. 1, Sec. 8, par. 3.

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

U. S. Const., Art. 4, Sec. 2, par. 1.

"No State shall, without the consent of Congress, lay any imposts or duties or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all imposts laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

U. S. Const., Art. 1, Sec. 10, par. 2.

The legislative enactments of Congress are as follows: "An act for the establishment of a Bureau of Animal Industry to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of

pleuro-pneumonia and other contagious diseases among domestic animals."

Supplement to Revised Statutes U. S., Vol. 1, pp. 435–6, Chap. 60, Secs. 3, 6 and 9.

The rules and regulations governing the operations of the Bureau of Animal Industry, as promulgated by the United States Department of Agriculture in 1900, are embraced in the transcript of record, case No. 269, Exhibit A, fols. 41–47.

The view taken by Dr. D. E. Salmon, Chief of the Bureau of Animal Industry, of the regulations of the Department, and his construction and interpretation thereof, are found in the transcript of the record, case No. 269, Exhibit C, fols. 48–50.

The Colorado statute, which plaintiff in error and appellant contends is in conflict with the Constitution and Statutes of the United States and with the rules and regulations of the Bureau of Animal Industry, is as follows, to-wit:

"It shall be unlawful for any person, association or corporation to bring or drive, or cause to be brought or driven into the State, between the first day of April and the first day of November, any cattle or horses from a State, territory or county, south of the thirty-sixth parallel of north latitude, unless said cattle or horses have been held at some place north of said parallel of latitude for a period of at least ninety days prior to their importation into this State, unless the person, association or corporation, owning or having charge of said cattle or horses, shall procure from the State veterinary sanitary board a certificate or bill of health to the effect that said cattle or horses are free from all infectious or contagious diseases and have not been exposed, at any time within ninety days prior thereto, to any of said diseases. The

expense of any inspection connected therewith to be paid by the owner or owners of such cattle or horses."

Mills Ann. Stat., Vol. 2, Sec. 4288, case No. 269, fol. 70, Trans. Rec.

The two consolidated causes arise out of the same transaction and involve the same question, namely: Whether the statute of the State of Colorado and the inspections and fees required thereunder, are in violation of the Constitution and laws of the United States, and the rules and regulations of the Department of Agriculture as fixed by the Bureau of Animal Industry? In other words, is interstate commerce, to-wit, the transportation from State to State of live stock, the owner of which holds a certificate, or bill of health, duly issued by an inspector of the United States Bureau of Animal Industry, unnecessarily burdened by the detention of the cattle at the State line for the purposes of such inspection and the imposition of charges upon the shipper?

Errors Assigned.

Plaintiff in error, as ground for reversal of the judgment of the Supreme Court of the State of Colorado, relies upon the errors following, to-wit:

First.—The court erred in not deciding that the conviction of the plaintiff in error was illegal.

Second.—The court erred in deciding that the statute of the State of Colorado, approved March 21, 1885, and under which plaintiff in error was prosecuted and convicted, is not repugnant to the provision of the Constitution of the United States giving Congress power to regulate commerce among the States, to-wit, Article 1, section 8, subdivision 3, of the Constitution of the United States,

as well as to the provision declaring that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, to-wit, Article 4, section 2, of the Constitution of the United States.

THIRD.—The Congress of the United States, having passed an act establishing a Bureau of Animal Industry, to-wit, the act printed in Volume 1, p. 435, chapter 60, sections 3, 6, and 9, Supplement Revised Statutes of the United States, and said Bureau of Animal Industry, having promulgated its rules in pursuance of said act, in the regulation of the exportation from this country, and the importation into this country, and the transportation of domestic animals from one State into another, the court erred in not declaring the statute of the State of Colorado, approved March 21, 1885, under which this prosecution was had, to be null and void, as imposing unnecessary burdens and restrictions upon interstate commerce.

FOURTH.—The court erred in failing and refusing to reverse the judgment of the district court of the county of Arapahoe, State of Colorado, and in not discharging plaintiff in error.

Case No. 269, fol. 17, Trans. Rec.

ARGUMENT.

WHEN A STATE MAY ACT.

FIRST.—In the absence of Federal legislation upon the subject, we concede that any State in the Union may legally pass reasonable and necessary sanitary inspection and quarantine laws in order to prevent animals suffering from contagious and infectious diseases from entering its borders, even though the result be to place burdens inci-

dentally upon interstate commerce in the transportation of live stock from one State to another.

Act in Question Unreasonable.

Second.—We deny that the act in question is reasonable or necessary. We deny that the fee imposed is "absolutely necessary for executing" it. We also deny that the act is permissible at all upon a matter of interstate commerce which Congress has seen fit to regulate by statute, which should be uniform throughout the Union.

Appellant's Contention.

Third.—The position of plaintiff in error and appellant is, that where the shipper has had his cattle inspected by an inspector of the United States Bureau of Animal Industry and has received a clean bill of health, such as appellant possessed, and has exhibited the same to the State sanitary officer, he has the legal right to ship such cattle through any State or States in the Union, without being subject to delay or inspection at any State line and without being compelled to pay a fee to any State through which the cattle may pass on their way to the point of ultimate destination.

Appellee's Contention.

Fourth.—The position of counsel for State of Colorado is, that it is the plain intention of Congress that national and State governments should co-operate in preventing the spread of communicable diseases among domestic live stock, and that neither the Federal act nor the State statute is a regulation of interstate commerce, but that the statute

is a mere quarantine or inspection law. It is further claimed that Congress has not assumed exclusive jurisdiction over the subject-matter, and that its request for State aid and co-operation gives license to each State to pass similar regulations and enforce compliance therewith.

COLORADO STATUTE NULLIFIES ACT OF CONGRESS.

FIFTH.—Against this position counsel for plaintiff in error and appellant maintain that the Colorado statute interposes a direct prohibition against the introduction into said State, during seven months in the year, of cattle from any State south of a certain parallel of north latitude, unless they shall have been held at some place north thereof for a period of ninety days, or unless the person in charge thereof shall have procured a bill of health from the Colorado veterinary sanitary board, to obtain which the expenses thereof shall be paid by the owner, and that this is done without reference to the Federal inspection laws and without any reservation, exception, or distinction being made in the terms of the State statute in favor of the holder of a clean bill of health issued by and under the authority of the United States Bureau of Animal Industry. This is not co-operation but nullification. The record shows that appellant's cattle were absolutely free from all infectious or contagious diseases. The offense in the case at bar consists, therefore, in the fact that appellant relied upon the bill of health issued by the inspector of the United States Bureau of Animal Industry. What he did was to refuse to pay for a wholly unnecessary and unauthorized second inspection, inasmuch as his cattle were then and there healthy, and inasmuch as the highest authority of the national Government had so certified.

SIXTH.—Adopt any other view, and it must follow that if appellant, when he shipped his cattle from Texas through Colorado, had billed them to a more remote point than Wyoming, he would have been subject to inspection as he crossed the State line of every State through which he passed, notwithstanding there is Federal legislation upon this subject, and notwithstanding the transportation of cattle from State to State has been declared to be interstate commerce, and notwithstanding he held a certificate or bill of health from the Federal inspector. The stoppage of his cattle alone is a burden to be endured only when necessity therefor exists, and it is certainly an anomalous condition of affairs that the State of Colorado should have the right to exact an enforced second inspection of the very cattle which the Government of the United States had inspected and had declared to be free from disease of every character, immediately prior to shipment. To compel the shipper, under these circumstances, to pay for such second inspection, and upon failure to do so to find him guilty of violation of law, in spite of the fact that his cattle were healthy and were so certified to be by an officer of the United States Bureau of Animal Industry, seems to us contrary to good conscience and a practical nullification of the Federal statutes and the rules and regulations of the Bureau of Animal Industry promulgated in pursuance thereof.

TRANSPORTATION OF LIVE STOCK IS A BRANCH OF INTERSTATE COMMERCE.

SEVENTH.—We take it as an established fact, that the transportation of live stock by rail or by water course from State to State, is a branch of interstate commerce.

Han. & St. J. R.R. Co. *v.* Husen, 95 U. S. 465, 469.

Is the Colorado Statute a Regulation of Interstate Commerce?

Eighth.—The ground upon which Congress has undertaken to provide for the inspection of live stock must be and is that it is a regulation of interstate commerce. The State statute must, therefore, be a regulation of interstate commerce. If it is not, then the Congressional act is not, and Congress is unwarrantably interfering in the matter.

We claim that the imposition of a tax for a second, third, fourth, or a fifth inspection at the State line, following upon the heels of an inspection by the Bureau of Animal Industry certifying a clean bill of health, coupled with the delay and expense necessarily incident thereto, amounts to a regulation, or interference with, or a restriction upon, the free passage of live stock from one State to another wholly unwarrantable and wholly beyond the necessities of the case. If this contention be answered affirmatively, then the Colorado statute, disregarding as it plainly does, and wholly annulling the effect of the Federal inspection, must be held to be in violation of Congressional regulations. This follows among other reasons from the fact that the State statute prescribes a rule concerning interstate transportation of cattle under color of an inspection law which wholly ignores or disregards the fact that Congress has legislated on that subject matter. Live stock, not only healthy in fact, but certified to be so by a United States inspector of the Bureau of Animal Industry, is stopped in transit on the borders of Colorado, and the shipper convicted of a violation of a State statute because he refused to pay for a second inspection.

NINTH.—The right of a State to pass quarantine and sanitary laws is self-defensive, and is among its reserved powers to conserve the safety of all persons and property within its limits, and until Congress intervenes by legislation thereon, any action taken by the State, reasonable and necessary in its scope, should be respected. It is imperative that legislation should be enacted in respect to matters of this kind. But it is equally true that Congress HAS legislated thereon. And the fact that Congress has done so precludes the State of Colorado from enacting this statute, if the same be unreasonable or unnecessary or cumulative or imposes grievous and unnecessary burdens upon the shipper engaged in interstate commerce, in excess of Congressional requirements. By way of analogy, it has been said that in the absence of legislation by Congress, a State may prescribe that engineers on interstate trains shall undergo an examination by a State board as to their mental and physical qualifications before becoming entitled to operate locomotive engines within that State. This power might, however, be exercised by Congress, and in that case would supersede any conflicting (or we will add) unnecessary and burdensome provisions on the same subject made by local authority.

State *v.* Alabama, 124 U. S. 465, 479–80.

REVIEW OF AUTHORITIES.

TENTH.—A review of the decisions bearing on interstate commerce, as affected by so-called police regulations of the State, shows that all State legislation, adjudged invalid by this court, either imposed a tax upon some subject of commerce, or exacted a license fee from the parties engaged in commercial pursuits, interstate in their nature, or created an impediment to the free navigation of public

waters or prescribed conditions in accordance with which commerce in particular articles or between particular places was required to be conducted. In all such cases the legislation condemned operated directly on interstate commerce, either by way of a tax upon its business or a license upon its pursuits in particular channels or conditions for carrying it on, unduly and unnecessarily imposed.

Sherlock *v.* Alling, 93 U. S. 99, 102.

COLORADO STATUTE REGULATES INTERSTATE COMMERCE.

ELEVENTH.—The Colorado statute directly regulates commerce between the States, for it materially affects the conduct of the shipper outside of the limits of the State. It imposes a tax or burden upon him, in that it exacts a fee from him for the reinspection of cattle in transit already inspected by Federal inspectors; it creates an impediment to the free transportation of his cattle over the territory, in that it necessitates stoppages; and, finally, it prescribes conditions, wholly unreasonable and unnecessary in their scope, in view of the possession by the shipper of a clean bill of health, issued to him by a United States inspector.

This statute is an attempt to compel the shipper about to transport his live stock from State to State, and holding a Federal inspection certificate or bill of health, to stop his cattle in transit, and at his own expense subject healthy cattle for the second time to the burden of reinspection.

THE HABER CASE.

TWELFTH.—In the case of the M., K. & T. R.R. Co. *v.* Haber, it is stated that Congress has full control over

interstate commerce, and that it is the only authority by which that commerce can be regulated, and yet upon the facts of that case opposing counsel in the court below mainly relied.

M., K. & T. R.R. Co. *v.* Haber, 160 U. S. 613.

An analysis of the Haber case shows that the State statute which was there violated only gave a cause of action for damages against persons who shipped diseased cattle into Kansas whereby domestic animals became infected. That provision could not possibly obstruct or embarrass interstate commerce. It regulated solely the injuries done to Kansas cattle, by others bringing into that State animals infected with contagious diseases. If a State statute, under the guise of police protection, should impose a tax, prescribe a duty, or work a delay or interference with shippers coming within its borders, the State enacting it would be *ipso facto* in the business of regulating interstate commerce. If, however, a State statute should only declare a general principle of law, governing the liability of persons within its jurisdiction, for the commission of torts, resulting in losses to others, it would not be in the business of interstate commerce nor interfering with nor regulating it. The imposition of a penalty for torts growing out of a violation of duty can never properly be said to be an obstruction to interstate commerce (*idem*, 623).

The Colorado Statute is Unreasonable and Unnecessary.

Thirteenth.—In the Husen case the decision was placed on the ground that while a State may prevent animals suffering from infectious diseases from entering

its borders, it may not, under cover of police power, substantially prohibit or burden interstate commerce, and the Missouri statute was held to be unconstitutional, solely because it went beyond the necessities of the case.

Han. & St. J. R.R. Co. *v.* Husen, 95 U. S. 465, 470–471.

FOURTEENTH.—The Colorado statute is subject to the same criticism. It also goes beyond the necessities of the case. Under the guise of self-protection, and under cover of quarantine regulation, it compels the shipper whose cattle have already been inspected by the agent of the United States Bureau of Animal Industry, not only to submit them to a reinspection, with attendant stoppage and delay, but to pay a fee therefor; it directly encroaches upon the national legislation, and adds to the inspection by the agent of the United States Bureau of Animal Industry a second inspection and a second stoppage, for the expense of which the shipper himself must stand good.

THE IDAHO CASE.

FIFTEENTH. The case of Rasmussen *v.* The State of Idaho, 181 U. S. 198, is distinguishable from the case at bar:

FIRST.—Because the Federal Government had not taken action on the subject of the importation of sheep into the State of Idaho, and so the Idaho statute could not conflict with, add to, detract from, or vary any Federal law, or nullify a Federal bill of health.

SECOND.—Because the sheep barred by the Idaho law were from an infected district, where scab was epidemic, and the prohibition was not a continuous act, as in the case at bar; but was one contemplating in every case an

investigation by the chief executive of the State, before any order of restraint was issued.

THIRD.—Because the importer of the sheep into the State of Idaho had not obtained, and did not have, a bill of health from an inspector of the United States Bureau of Animal Industry, as provided for by the Congressional act.

THE LOUISIANA-TEXAS CASE.

The case of Smith *v.* R.R. Co., 181 U. S. 248, involving the validity of the Texas quarantine laws, is distinguishable from the case at bar in this, that the cattle in question in that case had not been inspected by a Federal inspector and the owner did not have a Federal bill of health. Upon the record in that case, the presumption was that the cattle in question were actually affected with contagious and infectious diseases; and the right of a State to prohibit the importation of live stock so diseased is conceded. But cattle having a Federal bill of health are not only *prima facie* healthy and free from liability of communicating disease to other animals, but they are conclusively so. For, if a State might contest the truth of the Federal inspection, overrule it and disregard it, the State inspection and regulation would become superior to the Federal. Hence live stock, having a Federal health certificate, is a legitimate subject of interstate commerce, which no State can hinder, burden or suppress.

IN ABSENCE OF FEDERAL LEGISLATION.

SIXTEENTH.—We repeat what we have heretofore conceded, that the power to prevent the importation of diseased cattle into its borders, rests primarily, in the absence of Federal legislation, with the State, and such

importation may be prohibited by it in the exercise of its police power, if acting within the necessities of the case. But the power to prevent the importation into and passage of diseased or infected cattle through a State, over the great thoroughfares, railroads and waterways, is a regulation of interstate commerce, and belongs to the State only in the absence of Federal legislation. Whatever may be the power of the State over that particular commerce which is altogether confined within its borders, it cannot prohibit or regulate that which is interstate. The effect of the Colorado statute is to obstruct such interstate commerce, and it conflicts with the provision of the Constitution, that "Congress shall have power to regulate commerce with foreign nations and among the several States, and with the Indian tribes."

Grimes *v.* Eddy, 126 Mo. 168.

SEVENTEENTH.—In the case of Kimmish *v.* Ball, it was properly held that the statute was leveled solely against allowing diseased Texas cattle, held and being within the State from running at large; and the court upheld the statutory provision, that whosoever permitted diseased cattle, in his possession, to run at large within the limits of the State should be liable for damages caused by the spread of the disease occasioned thereby.

Kimmish *v.* Ball, 129 U. S. 217, 222.

THE HUSEN CASE.

EIGHTEENTH.—In the Husen case this court used this language in reference to the statute of Missouri which totally prohibited, for the period of eight months in the year, the importation of Texas cattle into the State:

"It seems hardly necessary to argue at length that unless the statute can be justified as a legitimate exercise of the police power of the state, it is a usurpation of the power vested exclusively in Congress; a regulation extending to prohibition. Whatever may be the power of a State over commerce which is completely internal, it can no more prohibit or regulate that which is interstate than it can that with foreign nations. Power over one is given by the Constitution of the United States to Congress, in the same words in which it is given over to the other, and in both cases it is necessarily exclusive. That the transportation of property from one State to another is a branch of interstate commerce is undeniable, and no attempt has been made in this case to deny it. The Missouri statute is a plain interference with such transportation; an attempted exercise over it of the highest possible power—that of destruction. It meets at the borders of the State a large and common subject of commerce, and prohibits its crossing the State line during two-thirds of each year, with a proviso, however, that such cattle may cross the line, loaded upon a railroad car or steamboat, and pass through the State without being unloaded. But even the right of steamboat owners and railroad companies to transport such property through the State, is loaded by the law with onerous liabilities because of their agency in the transportation. The object and effect of this statute are, therefore, to obstruct interstate commerce, and to discriminate between the property of citizens of one State and that of citizens of other States. This court has heretofore said that interstate transportation of passengers is beyond the reach of a State legislature. And if, as we have held, State taxation of persons passing through one State to another, or a State tax upon interstate transportation of passengers, is prohibited by the Constitution be-

cause a burden upon it, *a fortiori*, if possible is a State tax upon the carriage of merchandise from State to State. Transportation is essential to commerce, or rather, it is commerce itself; and every obstacle to it, or burden laid upon it by legislative authority, is regulation."

H. & St. J. R. R. *v.* Husen, 95 U. S. 465, 472.

NINETEENTH.—And in the same case the court further says: "While we unhesitatingly admit that a State may pass sanitary laws and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the State; while for the purpose of self-protection it may establish quarantine and reasonable inspection laws, it may not interfere with transportation into or through the State BEYOND WHAT IS ABSOLUTELY NECESSARY FOR SELF-PROTECTION. It may not, under cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce. Upon this subject the cases of 92 U. S., to which we have referred, are very instructive. In Henderson *v.* Mayor, etc., the statute of New York was defended as a police regulation to protect the State against the influx of foreign paupers; but it was held to be unconstitutional, because its practical result was to impose a burden upon all passengers from foreign countries. And it was laid down that, "In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect." The reach of the statute was far beyond its professed object, and far into the realm which is in the exclusive jurisdiction of Congress. * * * They (certain cases) deny validity to any State legislation professing to be an exercise of police power for protection against evils from abroad, which is beyond the

necessity for its exercise wherever it interferes with the rights and powers of the Federal Government. * * * The police power of a State cannot obstruct foreign or interstate commerce beyond the necessity for its exercise, and under color of it, objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution. And as its range some times comes very near to the field committed by the Constitution to Congress, it is the duty of the courts to guard vigilantly against any needless intrusion."

H. & St. J. R. R. *v.* Husen, 95 U. S. 465, 472, 473.

TWENTIETH.—We ask whether, with an immediate antecedent Federal inspection of appellant's cattle, and certificate to their health and to the fact that no Texas fever was known to exist where they had been kept, or on the trail over which they had passed, there was any necessity whatsoever for the second inspection? If not, this court should deny the validity of the statute as interfering beyond what was necessary for self-protection with transportation into and passage through the State.

UNIFORMITY OF REGULATION.

TWENTY-FIRST.—It is a well-settled doctrine that a State can no more regulate or impede commerce among the several States than it can regulate or impede commerce among foreign nations. The power to regulate commerce among the several States is granted to Congress in absolute terms. If, in the absence of Congressional action the State may regulate matters of local interest, only incidentally affecting interstate commerce, still the power of Congress is exclusive, whenever the matter is NATIONAL IN ITS CHARACTER OR ADMITS OF ONE UNIFORM SYSTEM OR PLAN

OF REGULATION; and is, certainly, so far exclusive that no State has power to make any law or regulation which will affect the free and unrestrained intercourse and trade between the States, as Congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of other States, coming or brought within its jurisdiction.

Brown *v.* Houston, 114 U. S. 622.

See also, Gibbons *v.* Ogden, 9 Wheat. 1, 8–23.

TWENTY-SECOND.—The subject of interstate commerce in general, and so far as it bears in particular upon the transportation of live stock from State to State, admits of and requires one uniform system of regulation. It is national in scope and can only be made homogeneous and consistent by national authority emanating from Congress. If this be true, important results follow. In the Cooley case it is said: "The power conferred by the Constitution upon Congress to regulate commerce is exclusive, and permits no action or interference by the States in any case where the subject of the power is national, or admits one uniform system of regulation."

Cooley *v.* Board of Wardens, 12 How. 152.

Gibbons *v.* Ogden, 9 Wheat. 16.

TWENTY-THIRD.—The same rule controls in the case of Henderson *v.* Mayor *et al.*

In the Henderson case the following language is used:

"It is said that the purpose of the act is to protect the State against the consequences of the flood of pauperism immigrating from Europe, and first landing in that city. * * * This power, frequently referred to in the decisions of this court, has been, in general terms, somewhat loosely called the police power. It is not necessary for

the course of this discussion to attempt to define it more accurately than it has been defined already. It is not necessary, because whatever may be the nature and extent of that power where not otherwise restricted, no definition of it and no urgency for its use can authorize a State to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution. * * * It is said, however, that, under the decisions of this court there is a kind of neutral ground, especially in that covered by the regulation of commerce, which may be occupied by the State, and its legislation be valid, so long as it interferes with no act of Congress or treaty of the United States. Such a proposition is supported by the opinions of several of the judges in the Passenger Cases; by the decisions of this court in Cooley *v.* Bd. of Wardens, 12 How. 299, and by the cases of Crandall *v.* Nevada, 6 Wall. 35 (73 U. S., XVIII, 745), and Gilman *v.* Philadelphia, 3 Wall. 713 (70 U. S., XVIII, 96). But this doctrine has always been controverted in this court, and has seldom, if ever, been stated without dissent. These decisions, however, all agree that, under the commerce clause of the Constitution, or within its compass, there are powers which, from their nature, are exclusive in Congress; and, in the case of Cooley *v.* Bd. of Wardens, it was said that, '*Whatever subjects of this power are in their nature national, or admit of one uniform system or plan or regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress.*' A regulation which imposes onerous, perhaps impossible, conditions on those engaged in active commerce with foreign nations, must of necessity be national in its character. * * * It is equally clear that these statutes may be *and ought to be the subject of a uniform* system or plan. The laws which govern the right to land passengers in the United States from other countries ought to be the same in New York, Boston, New Orleans, and San Francisco. A striking evidence of the truth of this proposition is to be found in the similarity, we might also say in the identity, of the statutes of New York, of Louisiana, and California, now before us for consideration in these three cases.

"It is apparent, therefore, that if there is a class of laws which may be valid when passed by the States until the same ground is occupied by a treaty or act of Congress, this statute is not of that class."

Henderson *v.* Mayor *et al.*, 92 U. S. 259, 269–271.
Chy Lung *v.* Freeman *et. al.*, 92 U. S. 275.

TWENTY-FOURTH.—Again in the case of The Gulf, C. & S. F. R. Co., *v.* Hefley & Lewis, this court says:

"Generally it may be said in respect to laws of this character that though resting upon the police power of the State, they must yield whenever Congress, in the exercise of the powers granted to it, legislates upon the precise subject-matter, for that power, like all other reserved powers of the State, is subordinate to those in terms conferred by the Constitution upon the nation. No urgency for its use can authorize a State to exercise it in regard to a subject-matter which has been confided conclusively to the discretion of Congress by the Constitution. Definitions of the police power must, however, be taken subject to the condition that the State cannot, in its exercise, for any purpose whatever, encroach upon the powers of the general Government, or rights granted or secured by the supreme law of the land. While it may be a police power in the sense that all provisions for the health, comfort and security of the citizens are police regulations and an exercise of police power, it has been said more than once in this court, that where such powers are so exercised as to come within the domain of Federal authority as defined by the Constitution, the latter must prevail. * * * It is unnecessary to pursue this discussion further. The State statute and the national law operate upon the same subject-matter, and prescribe different rules concerning it. The national law is unquestionably one within the competency of Congress to enact under the power given to regulate commerce between the States. The State statute must, therefore, give way."

The Gulf, C. & S. F. R. Co., *v.* Hefley & Lewis, 158 U. S. 99–105.

National Excludes State Regulation.

Twenty-fifth.—While it was conceded in the brief of the Attorney General of the State of Colorado, in the court below, that the State statute and the Congressional act operate upon the same subject-matter, and that were different rules prescribed by each in relation thereto the State statute must then give way before the Federal law, yet he contended that the Federal act and the State statute are merely supplemental to each other and that both may lawfully be enforced within the same territory. Our answer to this is that the imposition of a burden in addition to that imposed by Congress is just as truly a regulation of commerce as if it were entirely different from and inconsistent with the Congressional act, and that the requirement of an inspection in addition to that provided by Congress is an unnecessary and unreasonable requirement—unreasonable because it assumes that the Federal inspection is insufficient, and unnecessary because one inspection is ample. Hence the State requirement is hostile both to the letter and the spirit of the constitutional provision. As to this see also the case of the Gulf C. & S. F. R. Co. *v.* Hefley & Lewis, 158 U. S. 99.

State Inspection Laws will Suppress Interstate Commerce in Live Stock.

The contention of the Attorney General of Colorado that the Federal act and the State statute were merely supplemental to each other, and that both may lawfully be enforced within the same territory, is utterly untenable. It assumes that the national and State inspectors will always and in every case reach the same conclusion as to

the sanitary condition of the animals inspected. As each set of inspectors is clothed with authority to determine whether the animals are free from disease, the Federal inspectors may, as in the case at bar, conclude that the animals were free from disease, and issue a certificate accordingly; while the State inspectors may reach a different conclusion and refuse a health certificate. This is not only possible, but extremely probable. The fact that "doctors will differ" is so well established that the saying has become an accepted adage. In such a contingency, what would result? If the owner of the animals having a Federal certificate of health proceeded with them through the State towards their destination, he would, having been refused a State certificate of health under the Colorado law, be arrested and thrown into prison, and subjected to a fine of as much as five thousand dollars or to imprisonment to the extent of two years in the county jail, or to both such fine and imprisonment in the discretion of the State court. The cattle would be seized and placed in quarantine for such time as the State inspectors might determine to be necessary. What then becomes of the Federal inspection and the Federal certificate of health, and the regulations of the Department of Agriculture? One of the regulations of the Department of Agriculture is as follows:

"Animals which have been inspected and certified by an inspector of the U. S. Bureau of Animal Industry, and are free from disease have the right to go into any State and be sold for any purpose *without further inspection or the exaction of fees.*"

Record in Case 269, p. 22.

The appellant and plaintiff in error in the case at bar had complied with the Federal law and with all the rules

and regulations of the Bureau of Animal Industry of the Department of Agriculture, and held a certificate to the effect that the 882 head of cattle which he was about to ship into the State of Colorado, "were free from any infectious or contagious disease."

Record in Case No. 269, p. 22.

The conflict between the Federal statute and Federal regulations, and the State statute and State regulations, is not only apparent, but glaring and irreconcilable.

Which must prevail? There is but one answer to this question, and that is found in the Constitution of the United States. Congress shall have power "to regulate commerce with foreign nations, and among the several States." And Congress having this power and having exercised it, the conflicting laws and regulations of a State are mere acts of nullification, and are unconstitutional and void.

Even if the State inspectors should in every instance reach the same conclusion reached by the Federal inspectors, which is improbable, the right to make State inspections and to impose fees for such service, if conceded, would become an intolerable burden on interstate commerce. Live stock shipped from New Mexico to New York must pass through the States of Colorado, Kansas, Illinois, Indiana, Ohio, Pennsylvania, New Jersey, and into New York—eight States. If one State may require a State inspection and State fees, all may do the same thing, and the detention required for making eight inspections and the amount required for paying eight sets of fees, would impose such a burden upon the traffic that it would be impracticable and unprofitable, and the result would be its entire suppression.

For these reasons, if for no others, this court must hold

the Colorado statute and regulations in question null and void, otherwise State inspection laws and State regulations may result in the entire suppression of interstate commerce in live stock.

INTERSTATE COMMERCE NOT SUBJECT TO STATE POLICE POWER.

TWENTY-SIXTH.—In the case of Leisy *v.* Hardin, the view of the court is thus expressed:

"And while, by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health and comfort of persons and the protection of property, so situated, yet a subject-matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State, unless placed there by Congressional action. Henderson *v.* New York City, 92 U. S. 259; Hannibal & St. J. R.R. Co. *v.* Husen, 95 U. S. 465; Walling *v.* Michigan, 116 U. S. 446; Robbins *v.* Shelby County Taxing Dist., 120 U. S. 489. The power to regulate commerce among the States is a unit, but if particular subjects within its operation do not require the application of a general or uniform system, the States may legislate in regard to them with a view to local needs and circumstances, until Congress otherwise directs; and the power thus exercised by the States is not identical in its extent with the power to regulate commerce among the States. The power to pass laws in respect to internal commerce, inspection laws, quarantine laws, health laws, and laws in relation to bridges, ferries, and highways, belongs to the class of powers pertaining to locality, essential to local inter-communication, to the progress and development of local prosperity, and to the protection, the safety and welfare of society, originally, necessarily belonging to, and upon the adoption of the Constitution reserved by, the States, except so far as falling within the scope of a power confided to the

general Government. *Where the subject-matter requires a uniform system* as between the States, the power controlling it is vested exclusively in Congress, and cannot be encroached upon by the States; but where, in relation to the subject-matter, different rules may be suitable for different localities, the States may exercise powers which, though they may be said to partake of the power granted to the general Government, are strictly not such, but are simply local powers, which have full operation until or unless circumscribed by the action of Congress in effectuation of the general power. Cooley *v.* Philadelphia Board of Wardens, 53 U. S., 12 How. 299." * * * "The doctrine now firmly established is, as stated by Mr. Justice Field in Bowman *v.* Chicago & N.W. R. Co., 125 U. S. 507:

"That where the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers and docks, and the like, which can be properly regulated only by special provisions adapted to their localities, the State can act until Congress interferes and supersedes its authority; but where the subject is national in its character, *and admits and requires uniformity of regulation*, affecting alike all the States, such as transportation between the States, including the importation of goods from one State to another, Congress can alone act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free. Thus the absence of regulations as to interstate commerce with reference to any particular subject is taken as a declaration that the importation of that article into the States shall be unrestricted. It is only after the importation is completed and the property imported is mingled with and becomes a part of the general property of the State that its regulations can act upon it, except so far as it may be necessary to insure safety in the disposition of the import until thus mingled."

Leisy *v.* Hardin, 135 U. S. 100–119.

TRANSPORTATION OF LIVE STOCK IS INTERSTATE COMMERCE.

TWENTY-SEVENTH.—It goes without saying that the transportation of live stock from State to State is not only a matter of general public interest, but in view of the millions of cattle and horses and sheep which are shipped annually through the various States of the Union, it is a subject national in its character, affecting vitally all of the States. It is, therefore, pre-eminently one for regulation by Congress and not by the separate commonwealths. It admits of a uniformity of regulation, and absolutely requires it. No homogeneousness of legislation leading to uniformity of regulation can ever be obtained except through the general Government. To relegate this subject to the determination of the State legislatures would only be to make confusion thrice confounded.

See on this point the case of Leisy *v.* Hardin, *supra.*

TWENTY-EIGHTH.—This fact was manifest to Congress and in consequence thereof there have followed divers enactments in the way of national legislation beginning with the act of Congress approved May 29, 1884, down to and inclusive of the year 1901. See Exhibit A, fol. 41, case 592.

There is no absence of national regulation, no silence on the part of the national Government.

In the case of Hinson *v.* Lott, it is said that Congress has the same right to regulate commerce among the States that it has to regulate commerce with foreign nations, and whenever it exercises that power, all conflicting State laws must give way, and that if Congress has made any declaration covering the matter in question we need inquire no further.

Hinson *v.* Lott, 75 U. S. 148.

Again: In the case of the State of Minnesota against Barber, wherein the invalidity of the Minnesota inspection statute was declared, the court recognized that a State, could not regulate commerce under the guise of an inspection law.

State of Minnesota *v.* Barber, 136 U. S. 313.

And the same doctrine was announced in the Brimmer case.

Brimmer *v.* Rebman, 138 U. S. 78.

SUMMARY.

TWENTY-SIXTH.—We recapitulate the several points upon which we rely for reversal of the judgment below, and which we think may be regarded as fully established by the decisions of this court:

a. The transportation of live stock from State to State is a branch of interstate commerce.

b. The jurisdiction of Congress to regulate interstate commerce is supreme and exclusive.

c. In the absence of Federal legislation on the subject any State may pass inspection and quarantine laws to prevent animals which have contagious or infectious diseases from entering its borders, even though the same may incidentally affect such interstate commerce, provided always such State enactments be reasonable and necessary.

d. When, however, Congress has legislated thereon, the State is precluded from passing any statute on the subject which either conflicts with, adds to, detracts from or varies the Congressional act, whether such statute be denominated an inspection law or not.

e. Congress has legislated thereon in express terms.

f. The Colorado statute adds to, varies and, in some respect, nullifies the effect of the Congressional act.

g. No State may ever, under cover of its police power, establish quarantine or inspection laws beyond the necessities of the case, or beyond what is absolutely necessary for self-protection.

h. The Colorado statute is unnecessary.

i. The interstate transportation of cattle is national in its character and admits of and requires one uniform system or plan of regulation, and is of such a nature as to require exclusive legislation by that body, since uniformity of regulation can only be realized by legislation of Congress.

j. And, finally, State inspection laws and regulations do not supplement and aid national inspections and regulations; but, on the contrary, if the right to enact State inspection laws is conceded when Congress has fully legislated on the subject, as in the case at bar, the effect will be, not only to burden and hinder interstate commerce in live stock, but to effectually suppress it.

Respectfully submitted.

RALPH TALBOT,
JOHN H. DENISON,
W. H. WADLEY,
Attorneys for Appellant and Plaintiff in Error in said Causes.

WILLIAM M. SPRINGER,
Of Counsel.

JAMES M. BECK,
Assistant Attorney General,
Of Counsel on behalf of the United States.

Office Supreme Court U.S.
FILED
OCT 13 1902
JAMES H. McKENNEY,
Clerk

Nos. 147 and 269.

Brf. of Post for Appellee & D. C.

Supreme Court of the United States.

OCTOBER TERM, 1902.

Filed Oct. 13, 1902.

ED. H. REID, APPELLANT,

vs.

ROBERT J. JONES, SHERIFF OF ARAPAHOE COUNTY, COLORADO, APPELLEE.

No. 147.
Habeas Corpus.

Appeal from the Circuit Court of the United States for the District of Colorado.

ED. H. REID, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF COLORADO, DEFENDANTS IN ERROR.

No. 269.
Criminal.

Writ of Error to the Supreme Court of the State of Colorado.

Brief and Argument for Appellee and Defendants in Error.

CHARLES C. POST,
Attorney General of Colorado and
Attorney for Appellee and
Defendants in Error.

IN THE

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Writ of Error to the Supreme Court of the State of Colorado.

May it please the court:

The above entitled causes present two phases of the same controversy, arising as follows:

First—Appellant was convicted in the District Court of Arapahoe county, Colorado, of violating the state inspection law, being section 4288 of Mills' Annotated Statutes of Colorado.

He immediately presented a petition to the District Court of the United States for the District of Colorado, praying a writ of *habeas corpus*, alleging the unconstitutionality of the state law under which he was convicted. On hearing, the writ was refused, and the petitioner remanded. From that decision he appealed to the Supreme Court of the United States, which is the cause numbered on the docket of this court as No. 147.

Second—Appellant also sued out a writ of error in the Supreme Court of Colorado, directed to the District Court of Arapahoe county. On February 3, 1902, the Supreme Court affirmed the judgment of the District Court (*Reid vs. People*, 68 Pac. Rep., p. 228), and thereupon he sued out a writ of error in this court, directed to the Supreme Court of Colorado, which is now numbered on this docket No. 269.

It will be noted that appellant and plaintiff in error has suffered much judicial tribulation in his endeavor to maintain his construction of his constitutional rights.

The facts out of which the controversies arose are: That appellant, about June 20, 1901, brought into Colorado 882 head of cattle from the counties of Lubbock and Cochran, Texas, which are south of the quarantine line, without having held said cattle at some place north of said line for a period of at least ninety days prior to bringing them into Colorado, and without having secured from the state vet-

erinary sanitary board of Colorado a certificate or bill of health such as is contemplated by the statute.

The sections of the Federal Constitution, and the enactment of Congress, and of Colorado, upon the subject are as follows:

"Congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." *(U. S. Con., Art. 1, Sec. 8, subd. 3.)*

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." *(U. S. Con., Art. 4, Sec. 2.)*

"No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all imposts laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress * * * *" *(U. S. Con., Art. 1, Sec. 10, subd. 2.)*

"An act for the establishment of a bureau of animal industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia, and other contagious diseases, among domestic animals." Approved May 29, 1884. *(Supplement to Revised Statutes U. S., Vol. 1, pp. 435-6, chap. 60, secs., 3, 6 and 9.)*

"It shall be unlawful for any person, association, or corporation, to bring or drive, or cause to be brought or driven, into this state, between the first day of April and the first day of November, any cattle or horses from a state, territory or county south of the 36th degree parallel of north latitude, unless said cattle or horses have been held at some place north of the said parallel of latitude for a period of at least ninety days prior to their importation into

this state, unless the person, association or corporation owning or having charge of such cattle or horses shall procure from the state veterinary sanitary board a certificate or bill of health, to the effect that said cattle or horses are free from all infectious or contagious diseases, and have not been exposed, at any time within ninety days prior thereto, to any of said diseases. The expense of any inspection connected herewith to be paid by the owner or owners of such cattle or horses." (L., '85, page 336, section 2.)

There are but two questions before the court:

First—Are the provisions of the Federal Constitution above recited contravened by the inspection law of Colorado?

Second—Are the provisions of the act establishing the Bureau of Animal Industry contravened by the inspection law of Colorado?

As to the first question, a reading of the Colorado act shows that it in no way infringes the commercial clause, the equal privilege of citizens clause, nor the import duty clause.

As to the second question, we may examine a little farther into the history of both the state and federal enactment, which examination will, as I believe, show that one supplements the other.

The federal enactment establishing the bureau of animal industry was approved May 29, 1884. Section 3 of the act invites the state authorities to co-operate in the execution and enforcement of this act.

Nearly a year later the state of Colorado passed an act "to prevent the introduction of any infectious or contagious diseases among the cattle and horses of this state," which was approved March 21, 1885. (Session Laws of Colorado, 1885, page 335.)

It would seem, therefore, that the Colorado act was intended as supplementary to and along the line of the federal act. This view finds support in the language of this court in reviewing a statute almost identical with that of Colorado:

"While the states were invited to co-operate with the general government in the execution and enforcement of the act, *whatever power they had to protect their domestic cattle against such diseases was left untouched and unimpaired by the act of congress*"

M. K. & T. Ry. Co. vs. Haber, 169 U. S., 613 (623).

In passing, it is well to call the attention of this court to a proviso in the Animal Industry Act that seems to have received no mention in the many cases in which the act was involved.

Section 6 of the Animal Industry Act provides as to transportation of cattle having communicable diseases and then attempts to declare when communicable diseases shall not be considered contagious in these words:

"Provided, That the so-called splenetic or Texas fever shall not be considered a contagious, infectious, or communicable disease within the meaning of sections four, five, six and seven of this act, as to cattle being transported by rail to market for slaughter, when the same are unloaded only to be fed and watered in lots on the way thereto."

If there is any provision that would seem to eviscerate an act, to deprive it of every possible sort of benefit, it is this provision, which declares that a well-known fact in the natural world does not exist under certain commercial conditions.

This court has already declared the necessity for the act of prevention and, quoting this court in support of its opinion, the Supreme Court of Missouri has stated the fact as follows:

"Since those cases were decided, scientific investigation has demonstrated, and it is now a matter of general information or knowledge, that Texas cattle are not, in fact, diseased themselves, so as to render them unhealthy for food, but that all Texas cattle are infected in their systems with a parasite or germ, which is harmless to them, but which when taken into the stomach by native cattle produces what is known as Texas fever. In *Kimmish vs. Ball*, 129 U. S., 217, it was said: 'That cattle coming from those sections of the country during the spring and summer months are often infected with a contagious and dangerous fever, is a notorious fact.' If then, it be a notorious fact, courts will take judicial notice thereof, and no proof is required. So it is said that: 'Courts will generally take notice of whatever ought to be generally known within the limits of their jurisdiction.' Greenleaf on Evidence (14 Ed.), Sec. 6. 'If a fact alleged to exist, and upon which the rights of parties depend, is within common experience and knowledge, it is one of which courts will take judicial notice.' *Minnesota vs. Barber*, 136 U. S., 313; *Brown vs. Piper*, 91 U. S., 37-42; *Phillips vs. Detroit*, 111 U. S., 604, 606.

"Whatever difference of opinion may have at one time existed as to the cause and character of what is known as Texas fever, and the manner in which it is communicated to native cattle of the state, yet the fact is of common knowledge that the disease is imparted under certain conditions by Texas cattle. This peculiar characteristic, and its notoriety, is recognized by this and many other states, as is shown by the various legislation with respect thereto as well as by regulations in the markets of the country which re-

quire this class of cattle to be kept separate from others."

Grimes vs. Eddy, 126 Mo., p. 168 (179).

This having been ascertained as a fact, and a fact so well established as to become a matter of general knowledge and so universally admitted to exist that the courts take judicial knowledge of it, it would seem that if congress intended the act as an exclusive regulation of the animal industry, superseding state legislation, that it must fail of its very purpose and put a premium on the shipment of diseased animals to market.

If the cattle are afflicted with the germ of the disease and at various points along the line to market they are unloaded to be fed and watered, it must appear self evident that the germs would be distributed wherever the cattle had come in contact with stock yards, and so aid in spreading the disease it is, at least, the alleged purpose, of the act to prevent. Such a startling exception can only have crept into the statute insidiously, and by the same influence in favor of particular interests that is found almost universally in corporation state acts which usually read "all corporations, except railroad and telegraph, shall be required" and then follows the imposed duties on all corporations, which railroads and telegraph companies seem to escape so successfully.

This exception in the Animal Industry Act should receive the attention of this court, and if such exception nullifies, as it appears, the beneficent provisions of the act, then the state of Colorado is without pro-

tection at all from the Federal act and must rely exclusively upon her statute.

In case of the *M., K. & T. Ry. Co. vs. Haber, supra*, the question of whether or not the regulations prescribed by the Agricultural Department as incidental to carrying the act into effect, could relieve from civil liability, was before the court, and in answer thereto the court says:

"The act does not declare that the regulations established by the Department of Agriculture should have the effect to exempt from civil liability one who, but for such regulations, would have been liable either under the general principles of law or under some state enactment for damages arising out of the introduction into that state of cattle so affected. As will be seen from the regulations prescribed by the Secretary of Agriculture, that officer did not assume to give protection to any one against such liability."

M., K. & T. Ry. Co. vs. Haber, 169 U. S., 624.

In the case at bar, the Federal inspector did add these words:

"Animals which have been inspected and certified by an inspector of the U. S. Bureau of Animal Industry, *and are free from disease* have the right to go into any state, and may be sold for any purpose, without further inspection or the exaction of fees."

Appellant's Ex. B. Abs., folio 34.

If it was not intended that the regulations of the Secretary of Agriculture could exempt a party from civil liability, it certainly was not intended, that, by a mere ipse dixit, an inspector could exempt a party from criminal liability for the violation of a state

statute. The provision on the inspection certificate is that animals which have been inspected *and are free from disease* may go into any state. As to whether such cattle were, as a matter of fact, free from disease, would depend entirely on their condition when they reached the state line of Colorado and that could only be determined by the state inspection.

As to the injuries resulting from said actions this court says:

"Neither corporations nor individuals are entitled, by force alone of the constitution of the United States and without liability for injuries resulting therefrom to others, to bring into one state from another state, cattle liable to impart or capable of communicating disease to domestic cattle. The contrary can not be affirmed under any sound interpretation of the constitution. This court, while sustaining the power of congress to regulate commerce among the states, has steadily adhered to the principle that the states possess, because they have never surrendered, the power to protect the public health, the public morals, and the public safety, by any legislation appropriate to that end which does not encroach upon rights guaranteed by the national constitution, nor come in conflict with acts of congress passed in pursuance of that instrument. Although the powers of a state must in their exercise give way to a power exerted by congress under the constitution, it has never been adjudged that that instrument, by its own force, gives anyone the right to introduce into a state, against its will, cattle so affected with disease that their presence in the state will be dangerous to domestic cattle."

M., K. & T. Ry. Co. vs. Haber, 169 U. S., p. 628.

Appellant claims that the fee of 1.5 cents per head is unreasonable because, as asserted by appellant's counsel, it goes beyond the necessities of the case.

The question of inspection fees has been before this court in a very recent case. In 1891 the legislature of North Carolina passed an act providing for a charge of 25 cents per ton on all fertilizers for the purpose of defraying the expenses connected with the inspection of the article. The matter came before this court upon the express question of the unreasonableness of the fees, among other things and in respect thereto this court said:

"If the receipts are found to average largely more than enough to pay the expenses, the presumption would be that the legislature would moderate the charge. But treating the question whether the charge of twenty-five cents per ton was shown to be so excessive as to demonstrate a purpose other than that which the law declared, as a judicial question we are satisfied that comparing the receipts from this charge with the necessary expenses, such as the cost of analyses, the salaries of inspectors, the cost of tags, express charges, miscellaneous expenses of the department in this connection, and so on, we can not conclude that the charge is so seriously in excess of what is necessary for the objects designed to be effected as to justify the imputation of bad faith and change the character of the act."

Patapsco Guano Company vs. North Carolina, 171 U. S., 345 (354).

The reasonableness of the fees would be made to depend upon the surrounding facts. It remains to be demonstrated that the fees are larger than are necessary for carrying the law into effect, and in the ab-

sence of such proof the court cannot conclude that the fees are unreasonable. Indeed it appeals to the reason without proof, that in the examination of animals, such as cattle and horses, that the fee of 1½ cents per head would hardly pay wages to the inspector for the time necessarily consumed in making a proper examination of each animal.

On the state branch of the case I cannot better advise the court than to refer to the opinion of the Supreme Court of Colorado in this case, *Reid vs. People*, 68 Pac. Rep., p. 228.

On the federal branch of the case it seems apt and fitting that the opinion of Judge Hallett should be submitted in full, it being as follows:

"This is a petition for a writ of habeas corpus. The petitioner was tried and convicted in the District Court of Arapahoe county for bringing cattle into this state contrary to the provisions of an act of the state to prevent the introduction of any infectious or contagious disease among the cattle and horses of this state. This act was approved March 21, 1885, 5 Sess., 335. In the first section all persons are forbidden to bring cattle or horses into the state which are subject to any infectious or contagious disease. In the second section it is declared to be unlawful for any person to bring or drive cattle or horses into the state from a territory or country south of the thirty-sixth parallel north latitude, unless said cattle or horses have been held at some place north of said parallel of latitude for a period of at least ninety days prior to their importation into this state, or unless the person owning or having charge of such cattle or horses shall procure from the state veterinary sanitary board a certificate or bill of health to the effect that said cattle and horses are free from all infectious and contagious diseases

and have not been exposed at any time within ninety days prior thereto to any of said diseases.

"The petitioner failed to get this certificate and thereupon he was convicted under the terms of the act for violating its provisions and judgment was given against him of imprisonment for a term of six months.

"It is contended on behalf of the petitioner that this act is displaced by an act of congress on the same subject which was approved May 29, 1884. The petitioner shows that he complied with the act of congress by procuring the cattle to be inspected in the state of Texas according to its terms and receiving a certificate that they were free from disease and might be exported from the state under the act of congress. This certificate of inspection, issued by the federal inspector in Texas, is dated June 18, 1901, and the proceedings in the District Court of Arapahoe county are dated June 26, 1901.

"With reference to both the act of congress and the act of the state of Colorado upon this subject it is to be observed that they are inspection laws. The act of congress is directed to the question of exporting cattle from any place where they may be subject to the diseases mentioned in the act, and probably refers especially to the matter of exporting cattle from the United States to a foreign country. But section 6 of the act is directed to the exporting of stock, cattle and horses from one state into another. So that, while the principal purpose of the act was to control the matter of exporting diseased cattle to foreign countries, it does in terms apply to the exporting of cattle from one state and importing them into another. The act of the state of Colorado relates only to the subject of importing cattle into this state. It provides for the appointment of inspectors and requires cattle, which shall be brought into the state from certain parts of the country which are said to be affected with the diseases against which the act is directed, to be inspected at the state line.

"Counsel for the petitioner assumes that the regulations of congress upon this subject, having been adopted in pursuance to the power conferred by the Constitution of the United States upon congress to regulate commerce with foreign countries and between the several states, and, in pursuance to the provisions of the Constitution of the United States, it can not be a subject of state legislation. Counsel contends that the power of congress in regulating commerce between the several states and with foreign countries is exclusive and states have no power in respect to it; this is probably a correct position if it were true that the matter of the act of congress was solely a question of commerce and if the act of congress were to be regarded as only a regulation of commerce. But it is not that—at least, it is not that as to commerce between the states. The power to prevent the spread of contagious and infectious diseases amongst animals and men resides in all governments. It resides in the United States to the extent that such powers are necessary to the functions of the government of the United States. In a much larger degree it resides in the several states, because the states are charged directly with the preservation of the health of the community, and as incidental to that the preservation of food and all articles which are intended for the use of men. So that it may be said, looking upon both of these acts as inspection laws, that they are within the power of the several governments from which they emanate. It may be said also that the state has a larger power than has congress in respect to a matter of the inspection of animals who may be thought to have some disease which renders them unfit for use. And so, when a law is clearly an inspection law, and that only, the act of one government does not at all displace the act of another. This is true as to contagious diseases among men. In the southern parts of the United States there are inspection laws and quarantine laws under the state and

under the federal government as well, both of which must be observed. I myself have been subjected to the operation of these laws in the state of Texas and have been required to comply with both the laws of Texas and the laws of the United States in respect to journeying through the country.

"The Supreme Court has often held in respect to food products and articles intended for the use of men that the inspection laws of the states went beyond limits which might be reasonable in respect to the exercise of the police powers of the state. This was the case in regard to intoxicating liquors in which the famous decision about original package was made, in which the court went so far as to say that under the power of congress to regulate commerce between the states, whisky and other intoxicants might be imported in original packages. There is something of the same kind in respect to oleomargarine and some decisions upon that subject. There is a case in 179 U. S. about cigarettes, a five to four decision, in which the court reaches the conclusion that a package of ten cigarettes is not an original package within the meaning of that term as theretofore expounded by the Supreme Court; and therefore the law of Tennessee, under which the ten cigarette packages imported into the state of Tennessee were condemned, was upheld.

"In the case of cattle and horses, which may be affected with disease, no question arises as to the character of the acts relating to them. There is no such question in the case of cattle and horses as has arisen in respect to whisky and oleomargarine, and cigarettes, and the like, because no one has maintained until now that these were matters upon which the state was not at liberty to legislate. This appears very clearly in the case of Kimmish vs. Ball, 129 U. S., 217, and of M., K. & T. Ry. Company vs. Haber, 169 U. S., 613. Those cases clearly support the doctrine that inspection laws in respect to cattle and horses

which are intended to prevent the spread of contagious diseases among them are valid, whether state or national; that they may stand together; that each government may make its own rule in respect to the matter, and shippers of cattle and horses must comply with the law, both state and national."

Under the guise of interstate commerce no person, or company, should be permitted to traffic in that which is dangerous to the welfare of the state through which such commerce is carried on. December 10, 1900, the Secretary of Agriculture notified all transportation companies and owners of stock that a contagious and infectious disease known as splenetic or Texas fever existed among cattle within the area including Lubbock and Cochran counties from which the cattle came. On May 4, 1901, the state veterinary sanitary board made substantially the same proclamation, adopted the same line of quarantine; on the 6th of May the governor issued his proclamation, and on the 18th of May, 1901, these cattle were shipped while the foregoing regulations were in force.

The Colorado statute prohibits the importation only between certain dates, May 1st and November 1st, in each year, and then only prohibits the importation of diseased cattle. The Colorado statute is purely an inspection law, because it has placed a time limit as to when the act ought to be done, and as to the kind of cattle that ought not to be imported. For healthy stock, the season is open at all times, and it is open to all stock seven months in the year—the winter season, when the germ of the disease would be killed by the weather; and the cars that might be infected thereby, or the yards, would be rendered non-

infectious and non-contagious, because the germs would be neutralized by the severity of the weather.

It was not the intention of the congressional prohibition to destroy the products of interstate commerce of one state to satisfy a mere theoretical interpretation of the law by saying that the state threatened could not protect itself because legislation had thrown a protection around products in transit and denied the same to products in the field.

Under the federal act, if a carload of cattle is presented to the federal inspector he may inspect and detain them if found diseased, because such cattle are being transported against the provisions of the act, unless, indeed, the shipper is wise enough to claim that the cattle are being transported by rail to market for slaughter, when these diseased cattle, leaving a trail of pestilence wherever they pass, must be considered as not having any contagious or infectious disease, under the exception in section 6.

And yet, if this is exclusive legislation, then, indeed, the state is helpless to protect itself against ravages of stock diseases, and its citizens must suffer that diseased cattle and horses labeled with the magic of interstate commerce may pass on without interference.

On the other hand, I affirm with the positiveness of conviction that the federal act is not only not exclusive, but is merely directory. That it was enacted in obedience to a widespread demand for protection against a disease so serious in its consequences that it had become a matter of judicial recognition, and that, in obedience to this federal recognition, the states followed with enactments, varied to suit the

circumstances of their own local position, which of necessity become an essential part of the law, for the regulation that might protect one state might be of no avail to another differently situated.

As to the numerical part of the argument, on page 25 of appellant's brief, that passing through eight states eight inspections might be demanded, I will concede for the purposes of the argument that this might happen, and I go farther and say that it ought to occur if it is necessary to protect the state against the importation of diseased cattle. The inspection should only be limited by the range of the disease, and not by state lines. The purport of the inspection is to ascertain a fact, and not to satisfy a theory. If in seven states no disease is found, and in the eighth state it has developed, then the inspection has served its purpose—it has arrested the disease at the point where it is most harmful. The traffic in diseased cattle is illegitimate, and no amount of detention, nor any considerable number of inspections, with a fee for each, can be considered a burden under such circumstances.

This court does not deal with the refinement of suppositions. It aims to deal with facts as they occur in the various parts of the Union.

It must of necessity recognize that local conditions are the very essence of preservation. Regulations that in Maine would be absurd become of substance and importance in western states. It is with these facts that we have to deal. The stamping out of disease is the most important work of the present age. Fever germs that are virulent on low coasts are neutralized on the high tablelands of the interior.

Diseases that do not affect, so far as it has been demonstrated, certain parts of the south, are fatal to cattle north of those sections.

As the question is one of materiality and substance to the state of Colorado, I have presumed at some length to set forth not only the leading cases upon the subject, but to invite the attention of this court to an existence of facts, upon which these decisions were framed, and which, in my view, should be controlling of this matter.

I believe that the Colorado Inspection Act, which has been upheld by the State Supreme Court and by the federal court, is a wise provision, called forth in aid of the federal act, and, as such, should be sustained.

Respectfully submitted,

CHARLES C. POST,
Attorney General of Colorado.

Supreme Court of the United States.

No. 147—October Term, 1902.

Ed H. Reid, Appellant, *vs.* Robert J. Jones, Sheriff of the County of Arapahoe, State of Colorado.	Appeal from the Circuit Court of the United States for the District of Colorado.

[December 1st 1902.]

Mr. Justice Harlan delivered the opinion of the Court.

After the appellant Reid had been convicted and sentenced, as shown in the case just decided, he was arrested upon a mittimus sued out by the State. He immediately obtained a writ of *habeas corpus* from the Circuit Court of the United States for the District of Colorado. But that court, upon hearing, remanded the prisoner to the custody of the State authorities, and dismissed his application to be discharged. He thereupon prayed and was allowed an appeal to this court.

The merits of this case have been fully considered in case No. 269. But if this had not been, we should dismiss the present appeal: for, one convicted in a State court for an alleged violation of the criminal statutes of the State, and who contends that he is held in violation of the Constitution of the United States, must ordinarily first take his case to the highest court of the State, in which the judgment could be reviewed, and thence bring it, if unsuccessful there, to this court by writ of error: that only in certain exceptional cases, of which the present is not one, will a Circuit Court of the United States, or this court upon appeal from a Circuit Court, intervene by writ of *habeas corpus* in advance of the final action by the highest court of the State. *Ex parte Royall*, 117 *U. S.* 241, 251; *New York* v. *Eno*, 155 *U. S.* 89; *Minnesota* v. *Brundage*, 180 *U. S.* 499, 502, *and authorities cited.*

The judgment is *Affirmed.*

True copy.

Test:

Clerk Supreme Court, U. S.